

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Fernando de la Lama Merino (CRD No.  
2257749),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2015046020001

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. In 2015, Enforcement opened an investigation into Fernando de la Lama Merino's ("de la Lama's") potential misconduct involving the sales of illiquid structured notes and bonds referred by a foreign individual while he was associated with a FINRA regulated broker-dealer. As part of that investigation, FINRA repeatedly requested pursuant to FINRA Rule 8210 that de la Lama provide certain documents and information. From July 13, 2016 to the present, de la Lama failed to comply with these requests in violation of FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. De la Lama entered the securities industry in 1992 when he associated with a former FINRA regulated broker-dealer. Between 1992 and 2003, de la Lama was registered as a General Securities Representative ("GSR") with two other FINRA regulated

broker-dealers. In 2003, de la Lama registered with EFG Capital International (“EFG” or the “Firm”), a FINRA regulated broker-dealer as a GSR. On May 25, 2016, de la Lama resigned from EFG and the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) on June 8, 2016, reporting that de la Lama voluntarily terminated his employment.

3. Although Respondent is no longer registered or associated with a FINRA regulated broker-dealer, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent’s registration with EFG, namely, June 8, 2016; and (2) the Complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA regulated broker-dealer.

#### **FIRST CAUSE OF ACTION**

##### **Failure to Cooperate (FINRA Rules 8210 and 2010)**

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. FINRA Rule 8210(a)(1) requires “a member, person associated with a member, or person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding.”

6. FINRA Rule 2010 requires FINRA regulated broker-dealers and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” Failure to comply with FINRA Rule 8210 is a violation of FINRA Rule 2010.
7. On June 30, 2015, Enforcement opened an investigation into de la Lama’s potential misconduct involving the sales of illiquid structured notes and bonds referred by a foreign individual while he was associated with a FINRA regulated broker-dealer.
8. As part of its investigation, Enforcement sent a FINRA Rule 8210 request to the attorney representing the Firm and de la Lama on May 4, 2016, requesting that de la Lama appear for on-the-record testimony (“OTR”) on May 24, 2016. De la Lama complied with that request and Enforcement took his OTR on that date.
9. On May 25, 2016, the day after providing testimony to Enforcement, de la Lama resigned from EFG. On May 31, 2016, the attorney representing the Firm and de la Lama informed Enforcement that his law firm would no longer be representing de la Lama.
10. On June 3, 2016, a new attorney representing de la Lama contacted Enforcement and provided Enforcement with a written statement that he represented de la Lama.
11. On June 20, 2016, Enforcement sent a letter to de la Lama’s new attorney by email requesting pursuant to FINRA Rule 8210 that de la Lama provide documents and information, including his telephone bills, telephone numbers for certain individuals involved in the referred transactions, passwords used by de la Lama when sending documents through email with those individuals, and electronic communications with

those individuals sent or received through de la Lama's personal email accounts (the "June 20<sup>th</sup> Letter").

12. The June 20<sup>th</sup> Letter asked that de la Lama provide a response no later than July 5, 2016. On June 30, 2016, de la Lama's attorney contacted Enforcement and requested an extension of time to respond to the June 20<sup>th</sup> Letter until July 13, 2016. Enforcement granted the request, however, de la Lama failed to provide the requested information by that date.
13. On July 13, 2016, de la Lama's attorney sent Enforcement a letter stating that he had withdrawn from representing de la Lama and that all future communications could be sent to de la Lama directly at an address in Key Biscayne, Florida. The address provided by de la Lama's attorney is also de la Lama's residential address as listed in the Central Registration Depository ("CRD") record.
14. On July 15, 2016, Enforcement sent a second letter to de la Lama at his CRD address (the "July 15<sup>th</sup> Letter") requesting pursuant to FINRA Rule 8210 that de la Lama provide the documents and information initially requested in the June 20<sup>th</sup> Letter.
15. The July 15<sup>th</sup> Letter was sent by first class mail and certified mail return receipt requested. The July 15<sup>th</sup> Letter was also sent to two personal email addresses that de la Lama provided during his OTR.
16. The July 15<sup>th</sup> Letter sent by certified mail return receipt requested was delivered to de la Lama's CRD address on July 22, 2016 and signed for by "IO" as agent. The July 15<sup>th</sup> Letter sent by first class mail to de la Lama's CRD address was not returned to

Enforcement. The July 15<sup>th</sup> Letter sent by email was likewise not returned to Enforcement.

17. The July 15<sup>th</sup> Letter requested that de la Lama provide the requested documents and information by no later than July 27, 2016. De la Lama failed to provide the requested documents and information by that date.
18. On August 2, 2016, Enforcement sent de la Lama a third letter requesting again pursuant to FINRA Rule 8210 that de la Lama provide the documents and information initially requested in the June 20<sup>th</sup> Letter (the “August 2<sup>nd</sup> Letter”).
19. Enforcement sent the August 2<sup>nd</sup> Letter by first class and certified mail return receipt requested to de la Lama’s CRD address and also by email to the two personal email addresses that de la Lama provided during his OTR.
20. The August 2<sup>nd</sup> Letter sent by certified mail return receipt requested was delivered to de la Lama’s CRD address on August 6, 2016 and signed for by “S” as agent. The August 2<sup>nd</sup> Letter sent by first class mail was not returned to FINRA. The August 2<sup>nd</sup> Letter sent by email was likewise not returned to Enforcement.
21. The August 2<sup>nd</sup> Letter requested that de la Lama provide the requested documents and information by no later than August 12, 2016. De la Lama failed to provide the requested documents and information by that date.
22. Enforcement has sent multiple requests for documents and information pursuant to FINRA Rule 8210 to de la Lama’s CRD address and email addresses, as described above.

23. To date, de la Lama has failed to provide any response to these FINRA Rule 8210 requests for documents and information.

24. The acts, practices, and conduct described above demonstrate de la Lama's failure to cooperate with this investigation and constitute violations of FINRA Rules 8210 and 2010.

### RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violation charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

### FINRA DEPARTMENT OF ENFORCEMENT

Date:

10/24/16



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