

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT JUAN ESCOBIO
(CRD No. 703813),

Respondent.

Disciplinary Proceeding
No. 2018059545201

Hearing Officer–DDM

**HEARING PANEL DECISION
GRANTING MOTION FOR
SUMMARY DISPOSITION**

February 5, 2020

Robert Juan Escobio failed to comply with multiple Rule 8210 requests for documents and information and on-the-record testimony. For this misconduct, Escobio is barred from association with any FINRA member in any capacity.

Appearances

For the Complainant: Janine D. Arno, Esq., Tino Lisella, Esq., and Daniel Cristol, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Rhonda A. Anderson, Esq.

DECISION

I. Introduction

In a two-count Complaint, the Department of Enforcement charged that Respondent Robert Juan Escobio violated FINRA Rules 8210 and 2010 by failing to respond to ten regulatory requests—five requests for documents and information (the First Cause of Action), and five requests for on-the-record testimony (“OTR”) (the Second Cause of Action). In his Second Amended Answer, Escobio denied liability and requested a hearing.

Enforcement filed a motion for summary disposition (“Motion”) on December 18, 2019, as to both liability and sanctions. Enforcement asserts there is no genuine issue of material fact and that, as a matter of law, Escobio violated FINRA Rules 8210 and 2010. Enforcement also argues that the undisputed facts require the Hearing Panel to impose a bar as a sanction.

Escobio responded to Enforcement’s Motion on January 8, 2020. Escobio does not argue that he complied with the ten regulatory requests. In fact, it is undisputed that Escobio failed to provide documents, information, or testimony in response to the Rule 8210 requests. Instead,

Escobio asserts that Enforcement’s investigation was illegitimate, because it was conducted for the sole purpose of obtaining documents for the Commodities Futures Trading Commission (“CFTC”) to collect on its judgment against Escobio. Escobio asserted several other affirmative defenses in his Second Amended Answer, though he did not address them in his opposition to Enforcement’s Motion (“Opposition”).

After careful consideration of the filings by the parties, the Hearing Panel grants Enforcement’s Motion as to both liability and sanctions on the First and Second Causes of Action of the Complaint. For each of those violations, Escobio is barred from associating with any FINRA member in any capacity.

II. Undisputed Facts

A. Background

Escobio became associated with Southern Trust Securities, Inc. (“Southern Trust”), a FINRA-registered firm, in June 2000.¹ On August 29, 2016, a federal court in Florida entered a judgment against Escobio in an action the CFTC brought against him for allegedly engaging in a fraudulent commodities scheme. On September 7, 2016, FINRA notified Southern Trust and Escobio in writing that Escobio was deemed statutorily disqualified as a result of that judgment.²

On July 27, 2017, the National Adjudicatory Council (“NAC”) denied a Membership Continuance Application (“MC-400”) filed by Southern Trust to allow Escobio to continue to associate with the firm.³ Two days later, on July 29, FINRA filed a Uniform Disciplinary Action Reporting Form (“Form U6”), reporting that Escobio was “subject to a statutory disqualification.”⁴ On August 7, 2017, Southern Trust filed its Uniform Termination Notice for Securities Industry Registration (“Form U5”) for Escobio, which stated that Escobio’s voluntary termination with the firm occurred on July 27, the day the NAC denied the firm’s membership continuance application.⁵ Almost two years later, on June 28, 2019, Southern Trust filed an amended Form U5 for Escobio, changing his date of termination to June 30, 2017.⁶

B. Origin of the Investigation

This proceeding began with a 2018 FINRA cycle examination of Southern Trust.⁷ During that examination, FINRA developed concerns that Escobio continued to associate with Southern

¹ Complainant’s Exhibit (“CX-”) 1 to Declaration of Janine D. Arno (“Arno Decl.”).

² CX-5.

³ CX-2, at 2, 4.

⁴ CX-2.

⁵ CX-3, at 1-2.

⁶ CX-4, at 12.

⁷ Arno Decl. ¶ 7.

Trust while statutorily disqualified.⁸ In March 2019, Enforcement began investigating Escobio's possible association with Southern Trust after July 2017, when the NAC denied Southern Trust's MC-400 application.⁹

C. The Rule 8210 Requests for Information and Documents

In connection with that investigation, Enforcement issued several Rule 8210 requests to Escobio. Each request was sent to Escobio's residential address as reflected in the Central Registration Depository ("CRD address").¹⁰

On March 26, 2019, FINRA sent a Rule 8210 request for information and documents to Escobio at his CRD address via certified mail and overnight delivery.¹¹ Escobio did not respond, so on April 10, 2019, FINRA sent Escobio another Rule 8210 request for the same information and documents.¹² Between April 1 and April 26, 2019, Escobio was incarcerated at the Federal Detention Center in Miami, Florida ("FDC Miami"), for contempt of court.¹³ Because Escobio was incarcerated at the time of this request, FINRA mailed the request to Escobio at an FDC Miami post office box address as well as his CRD address.¹⁴ On May 2, 2019, FINRA sent Escobio yet another Rule 8210 request for the same information and documents, to his CRD address via first-class mail, certified mail, and overnight delivery.¹⁵

Enforcement also sent Escobio a separate Rule 8210 request for additional information and documents on May 2, 2019 (the "Additional Request").¹⁶ The Additional Request was sent to Escobio's CRD address via first-class mail, certified mail, and overnight delivery.¹⁷ On June 6, 2019, Enforcement sent another Rule 8210 request to Escobio for the same information and documents covered by the Additional Request.¹⁸ Enforcement sent this by mail to Escobio's CRD address, and by mail and email to an attorney representing Escobio.¹⁹

⁸ Arno Decl. ¶¶ 7-9.

⁹ Arno Decl. ¶ 11.

¹⁰ CX-12; CX-14; CX-15; CX-16; CX-17; CX-20; CX-21; CX-22; CX-23; CX-27; CX-30; CX-31; CX-35; CX-36; CX-38; CX-39.

¹¹ CX-12; CX-13.

¹² CX-14.

¹³ CX-9; CX-11.

¹⁴ CX-14; CX-15.

¹⁵ CX-16.

¹⁶ CX-16, at 7-8.

¹⁷ CX-17.

¹⁸ CX-20.

¹⁹ CX-21.

In sum, Enforcement sent five requests for information and documents to Escobio pursuant to Rule 8210. Escobio does not dispute that he received these requests. Nor does he dispute that he failed to produce to FINRA any of the information or documents sought by the requests.

D. The Rule 8210 Requests for Testimony

Enforcement sent Escobio a series of requests for his OTR pursuant to FINRA Rule 8210. On March 29, 2019, FINRA sent an OTR request to Escobio at his CRD address via certified mail and overnight delivery.²⁰ In the letter, Enforcement requested that Escobio appear for his testimony at FINRA's offices in Boca Raton on April 18, 2019.²¹ On April 9, 2019, an attorney representing Escobio responded to this OTR request by stating that "Mr. Escobio is incarcerated and unable to appear for the requested oral examination"²² On the following day, April 10, an Enforcement attorney emailed Escobio's attorney offering "to discuss moving the OTR to the federal detention facility, FDC Miami, where Mr. Escobio is currently detained."²³

Escobio did not appear for testimony on April 18, 2019,²⁴ however, and Enforcement sent another OTR request on May 2, 2019, to Escobio's CRD address by first-class mail, certified mail, and overnight delivery.²⁵ The letter requested that Escobio appear for testimony at FINRA's offices in Boca Raton on May 20, 2019, at 9:30 a.m.²⁶ But Escobio did not appear for his testimony,²⁷ and at 5:44 p.m. that day, a new attorney for Escobio emailed Enforcement and stated that "based upon advice-of-counsel, Mr. Robert Escobio will not be able to participate in the On-The-Record (OTR) testimony at this time."²⁸ His attorney added that "after the appeal pending before the Eleventh Circuit Court of Appeals in the CFTC matter has concluded, Mr. Escobio will make himself available."²⁹

On May 21, 2019, Enforcement sent Escobio a third request for testimony pursuant to Rule 8210, scheduling the OTR for May 29.³⁰ At 4:12 p.m. on May 28, 2019, the day before the

²⁰ CX-22.

²¹ CX-22.

²² CX-24.

²³ CX-25.

²⁴ CX-26.

²⁵ CX-27.

²⁶ CX-27.

²⁷ CX-28.

²⁸ CX-29, at 2.

²⁹ CX-29, at 2.

³⁰ CX-30.

OTR was scheduled to occur, Escobio’s attorney sent a letter to Enforcement stating that “this office is currently working with Mr. Escobio to respond to discovery and other time sensitive matters in the CFTC case referenced above, and neither Escobio nor I are available to attend on May 29th.”³¹ She proposed “to reschedule for the week of July 1st or July 29th” and asked Enforcement to “advise as soon as possible which day during those two weeks [was] available on [its] schedule.”³² About an hour later, Enforcement responded to Escobio’s counsel by declining to postpone Escobio’s OTR scheduled for the following day.³³ Enforcement also stated, “Should your client decide to appear for testimony at a later date, we request that you provide us with dates of his availability as soon as possible . . . given we are nearing a jurisdiction deadline.”³⁴

Escobio did not appear for testimony on May 29, 2019.³⁵ On June 25, Enforcement sent a fourth Rule 8210 request for testimony to Escobio’s counsel.³⁶ Based on Escobio’s counsel’s offer to reschedule the OTR for the week of July 1, Enforcement requested that Escobio appear for an OTR in FINRA’s Boca Raton offices on July 2, 2019.³⁷ On June 28, however, Escobio’s counsel called Enforcement and said that Escobio would not appear for testimony on July 2, due to a conflict with his work as a flight instructor.³⁸ Indeed, Escobio did not appear for his OTR on July 2, 2019.³⁹

On July 2, 2019, Enforcement and Escobio’s counsel identified July 8, 2019, as a date Escobio was available for an OTR.⁴⁰ So Enforcement sent a fifth 8210 request to Escobio, scheduling his OTR for Monday, July 8.⁴¹ On Friday, July 5, at 6:08 p.m., Escobio’s counsel sent Enforcement a letter stating that Escobio would not be available for an OTR on July 8.⁴² Escobio’s counsel wrote that “Mr. Escobio’s flight schedule has been revised and he is required to work both in the morning and the afternoon on July 8, 2019.”⁴³ Escobio’s counsel added that Escobio’s “failure to report to work will result in his permanent loss of employment.”⁴⁴ Because

³¹ CX-32.

³² CX-32.

³³ CX-33.

³⁴ CX-33.

³⁵ CX-34.

³⁶ CX-35.

³⁷ CX-35.

³⁸ Arno Decl. ¶ 50.

³⁹ CX-37.

⁴⁰ Arno Decl. ¶ 52.

⁴¹ CX-38.

⁴² CX-40.

⁴³ CX-40, at 2.

⁴⁴ CX-40, at 2.

Escobio “has no intention to seek re-registration in the future,” Escobio’s counsel wrote, and because Enforcement had expressed its intention to file a complaint based on his failure to appear in response to prior OTR requests, Escobio “hereby agrees to a voluntary bar.”⁴⁵ Escobio did not appear for testimony on July 8, 2019.⁴⁶

III. Discussion

A. Legal Standards Governing Summary Disposition

Under FINRA Rule 9264(e), a hearing panel may grant a motion for summary disposition “if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law.” As the party requesting summary disposition, Enforcement bears the initial burden of informing the Hearing Panel “of the basis for its motion, and identifying those portions of ‘the pleadings . . . and admissions on file, together with the affidavits, if any,’” which demonstrate that there is no genuine issue of material fact.⁴⁷ If Enforcement meets that burden, Escobio must come forward with “specific facts” showing that there is a genuine issue for hearing.⁴⁸ In assessing whether a motion for summary disposition should be granted, the issue is “whether the evidence presents a disagreement sufficient to require submission to fact finding.”⁴⁹

B. FINRA Has Jurisdiction Over This Proceeding

Though Escobio did not argue this in his Opposition, he asserted in his Second Amended Answer that FINRA does not have jurisdiction over this proceeding because the Complaint was filed more than two years after he retired. According to Escobio, he terminated his association with Southern Trust on June 30, 2017. Article V, Section 4(a)(i) of FINRA’s By-Laws allows FINRA to file a complaint against a formerly associated person within “two years after the effective date of termination of registration” Because the Complaint was filed on July 17, 2019, Escobio argued, more than two years after he stopped working for Southern Trust, Enforcement’s action is time-barred.

But Escobio’s jurisdictional arguments are erroneous as a matter of law. FINRA’s jurisdiction over Escobio is based not upon when he ended his employment or association with Southern Trust, but when his registration was terminated.⁵⁰ Escobio’s FINRA registrations were

⁴⁵ CX-40, at 2.

⁴⁶ CX-41.

⁴⁷ *Dep’t of Enforcement v. Fawcett*, No. C9A040024, 2007 NASD Discip. LEXIS 2, at *10 (NAC Jan. 8, 2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

⁴⁸ *Id.* at *11 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)).

⁴⁹ *Dep’t of Enforcement v. Respondent*, No. C02050006, 2007 NASD Discip. LEXIS 13, at *13 (NAC Feb. 12, 2007).

⁵⁰ *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *21 (July 27, 2015).

terminated on July 28, 2017, the day after the NAC denied Southern Trust's MC-400 application.⁵¹ FINRA filed a Form U6 for Escobio on the next day, July 29, 2017, reporting that Escobio was statutorily disqualified and that his MC-400 application had been denied. Southern Trust filed a Form U5 for Escobio on August 7, 2017, specifying that Escobio's association with Southern Trust ended on July 27, 2017.

The fact that, two years later, Southern Trust amended the Form U5 to change Escobio's termination date to June 30, 2017, is irrelevant. What matters is when FINRA ended his registration. As the SEC has stated, "[a] person who becomes registered remains registered until FINRA (not the registered person) ends the registration based, among other things, on the Forms U5 it receives."⁵² Because Escobio's FINRA registration was not terminated until July 28, 2017, and the Complaint was filed within two years of that date, FINRA has jurisdiction over this proceeding.

C. Escobio Violated FINRA Rules 8210 and 2010

FINRA Rule 8210 provides FINRA staff with the authority to require associated persons to provide information and testimony about any matter involved in a FINRA investigation. Associated persons have a duty to provide their "full and prompt cooperation" under FINRA Rule 8210 when responding to FINRA information requests.⁵³ As a formerly registered person subject to FINRA's jurisdiction, Escobio possessed an unequivocal duty to cooperate with FINRA, even if he viewed the FINRA requests as superfluous or immaterial.⁵⁴ A failure to comply with FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade, and is a violation of FINRA Rule 2010.⁵⁵

It is undisputed that Escobio did not provide any information and documents in response to five Rule 8210 requests for information and documents, as alleged in the First Cause of Action in the Complaint. It is also undisputed that Escobio did not provide any testimony in response to

⁵¹ CX-1, at 3.

⁵² *Evansen*, 2015 SEC LEXIS 3080, at *22.

⁵³ *Brian L. Gibbons*, 52 S.E.C. 791, 794 (1996); *see also CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) ("[A] member firm and its associated persons have an obligation to respond to [FINRA's] requests fully and promptly.")

⁵⁴ *CMG Inst'l Trading*, 2009 SEC LEXIS 215, at *21 (Associated persons "may not ignore [FINRA] inquiries; nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct.") (quotation marks omitted); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *47 (NAC July 18, 2014) ("Associated persons . . . must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material."); *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *28-29 (NAC June 3, 2014) (finding that respondent had an unequivocal duty to appear and testify even if he viewed FINRA's requests as superfluous in light of his prior responses), *aff'd*, 2015 SEC LEXIS 3080.

⁵⁵ *Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20-21 (NAC May 15, 2019).

five Rule 8210 requests for testimony, as alleged in the Second Cause of Action in the Complaint. Finally, it is undisputed that Escobio received both constructive and actual notice of the requests because they were all sent to his CRD address,⁵⁶ and because he retained lawyers who negotiated with Enforcement about them.

Instead, Escobio attacks the legitimacy of FINRA’s investigation and argues that the Rule 8210 requests issued by Enforcement during that investigation are invalid. In his Opposition, Escobio argues that the “investigation of this resigned member who was otherwise permanently barred from the industry served one purpose: obtain for the [CFTC] records, documents and potential testimony that it otherwise could not obtain in the District Court proceedings after discovery had closed.”⁵⁷

In addition, in his Second Amended Answer, Escobio asserted:

- Enforcement used Rule 8210 to conduct an investigation “without having a reasonable and good faith belief that [he] accessed and utilized Southern Trust’s email system and communicated with Southern Trust customers regarding securities business” after his registration was revoked on July 27, 2017;
- Enforcement used Rule 8210 in a discriminatory manner, “based upon his Cuban and/or Hispanic ethnicity”;
- Enforcement used Rule 8210 improperly because he worked at a small firm, “which FINRA investigates and seeks enforcement actions against on a discriminatory and disproportionate basis”;
- Enforcement improperly sought testimony and information “without complying with the United States Bureau of Prisons’ policies or procedures for obtaining testimony”;
- Enforcement sought records and testimony under unreasonable conditions, when Enforcement knew that he could not comply; and
- The claims in the Complaint are barred by the doctrines of waiver, estoppel, and laches.

⁵⁶ See *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at *12-13 (Mar. 24, 2017) (holding that formerly registered individual is deemed to have received Rule 8210 request for information and documents sent to last address of record as indicated in CRD); *Evansen*, 2015 SEC LEXIS 3080, at *29-30 (same).

⁵⁷ Opposition 2.

Escobio failed to point to any specific facts to support any of these assertions, however, as he must do to overcome summary disposition.⁵⁸ Instead, Enforcement has pointed to facts, in the form of documents and a declaration, that negate any inference that Enforcement's investigation was motivated by a discriminatory or improper purpose. According to a declaration submitted by an Enforcement attorney, supported by exhibits, FINRA staff conducting a cycle examination of Southern Trust found evidence that suggested that Escobio continued to use his Southern Trust email address after he was statutorily disqualified.⁵⁹ Once the examination was referred to Enforcement, Enforcement collected other emails from Southern Trust that suggest Escobio conducted securities business on behalf of Southern Trust after he was statutorily disqualified.⁶⁰

Escobio asserts that there is a dispute of material fact regarding whether Escobio actually continued to use his Southern Trust email address after he resigned. He argues that the declaration submitted by the Enforcement attorney is insufficient because there is "[n]o eyewitness testimony from anyone who saw the emails being drafted or from anyone who received the emails"⁶¹ But Enforcement does not charge Escobio with continuing to associate with Southern Trust after his statutory disqualification; instead, Enforcement alleges in its Complaint that Escobio did not respond to Rule 8210 requests in the course of its investigation. Whether Escobio or someone else sent the emails is irrelevant to whether he complied with Rule 8210 requests sent to him during the investigation.

Nor has Escobio raised a genuine issue of material fact that Enforcement set unreasonable terms or conditions on its regulatory requests. Escobio has never provided any information or documents in response to the five Rule 8210 requests sent to him between March 26 and June 6, 2019. In addition, he declined to comply with five OTR requests sent to him between March 2019 and July 2019, citing various reasons that are insufficient as a matter of law. He claims that Enforcement failed to comply with the policies of the Bureau of Prisons for taking testimony while he was incarcerated. But the record is uncontroverted that his attorney never responded to Enforcement's offer to take his testimony while he was in prison.⁶² In addition, in his correspondence with Enforcement, he cited as justifications for not appearing: advice of counsel, conflicts with his work schedule, and a pre-occupation with litigation brought against him by the CFTC.⁶³ None of these justifications are sufficient to create a genuine issue of

⁵⁸ OHO Order 07-16 (C11040006) (Apr. 18, 2007), at 3-4, (citing *Dep't of Enforcement v. Shvartz*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *10 n.11 (NAC June 2, 2000)), http://www.finra.org/sites/default/files/OHO_Ddecision/p037020_0_0_0_0.pdf.

⁵⁹ Arno Decl. ¶¶ 7-9; CX-6.

⁶⁰ Arno Decl. ¶ 12; CX-7.

⁶¹ Opposition 2.

⁶² Arno Decl. ¶ 38.

⁶³ CX-19; CX-24; CX-29; CX-32; CX-40.

material fact that would require a hearing.⁶⁴ Finally, Escobio has failed to point to any legal justification or factual support for his defenses of waiver, estoppel, and laches, which simply reiterate his other arguments for why Enforcement’s Rule 8210 requests were invalid.

Summary disposition in favor of Enforcement is therefore appropriate on both the First and Second Causes of Action of the Complaint. Escobio violated FINRA Rules 8210 and 2010.

D. Sanctions

Escobio failed to comply with ten Rule 8210 requests—five for information and documents, and five for investigative testimony. He failed to produce any documents or information in response to the requests, and never appeared for testimony. FINRA’s Sanction Guidelines (“Guidelines”) provide that if an individual does not respond in any manner to a Rule 8210 request, then a bar should be the standard sanction.⁶⁵ The only principal consideration under the Guidelines for a failure to respond to a Rule 8210 request is the “[i]mportance of the information requested as viewed from FINRA’s perspective.”⁶⁶

Enforcement demonstrated that it requested information and testimony from Escobio to investigate whether Escobio continued to associate with Southern Trust after he was statutorily disqualified. This is potentially serious misconduct,⁶⁷ and the information requested by Enforcement from Escobio was important to its investigation and to perform its regulatory function. Escobio has pointed to no specific facts to show that there is a genuine issue in dispute regarding this principal consideration. Instead, he asserts, without factual support, that Enforcement’s investigation was conducted in bad faith. In short, the importance of the information requested by Enforcement supports the imposition of a bar as a sanction.

The failure to comply with FINRA Rule 8210 “is a serious violation justifying stringent sanctions because it subverts [FINRA]’s ability to execute its regulatory functions.”⁶⁸ As the

⁶⁴ *Dep’t of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at *18 (NAC Feb. 25, 2014) (“a respondent’s reliance on an attorney’s legal advice is ‘immaterial to an associated person’s obligation to supply requested information’ to FINRA”) (quoting *Michael Markowski*, 51 S.E.C. 553, 557 (1993), *aff’d*, 34 F.3d 99 (2d Cir. 1994)); *Dep’t of Enforcement v. Zigler*, No. C01030030, 2004 NASD Discip. LEXIS 37 (OHO Mar. 31, 2004) (finding Rule 8210 violation despite respondent’s claim that complying with request for testimony would impinge on his work schedule); *Darrell Jay Williams*, 50 S.E.C. 1070, 1072 (1992) (upholding sanction in Rule 8210 case when respondent claimed he would respond to Rule 8210 request once ancillary legal action was resolved).

⁶⁵ FINRA Sanction Guidelines at 33 (2019), www.finra.org/sanctionguidelines.

⁶⁶ *Id.*

⁶⁷ FINRA’s registration requirement “provides an important safeguard in protecting public investors and strict adherence to that requirement is essential because it serves a significant purpose in the policing of the securities markets and in the protection of the public interest.” *Michael F. Flannigan*, 56 S.E.C. 8, 17 (2003) (internal quotations omitted).

⁶⁸ *Elliot M. Hershberg*, 58 S.E.C. 1184, 1190 (2006), *aff’d*, 210 F. App’x 125 (2d Cir. 2006).

SEC has stated, “[a] complete failure to respond to a request for information pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests.”⁶⁹ When there is a complete failure to respond and no mitigating factors, a bar has a remedial, not a punitive purpose.⁷⁰

Escobio pointed to no mitigating factors or disputed issues of material fact that would justify a hearing on sanctions, and the Hearing Panel is unable to identify any. Instead, the Hearing Panel finds several undisputed aggravating factors: Escobio ignored numerous requests for documents, information, and testimony over an extended period of time,⁷¹ and Enforcement warned him several times that he could be barred for failing to cooperate.⁷² Under these circumstances, a bar is the appropriate sanction for the First Cause of Action, for Escobio’s failure to provide documents and information in response to Rule 8210 requests. In addition, a separate bar is the appropriate sanction for the Second Cause of Action, for Escobio’s failure to provide testimony in response to Rule 8210 requests.

IV. Order

The Hearing Panel grants Enforcement’s Motion because there are no genuine issues of material fact that require a hearing, and it is entitled to judgment as a matter of law. Accordingly, the Hearing Panel finds that Respondent Robert Juan Escobio violated FINRA Rules 8210 and 2010 as alleged in causes one and two of the Complaint, and imposes a bar from associating with any member firm in any capacity under each cause of action. The bars shall become effective immediately if this decision becomes FINRA’s final action in this disciplinary proceeding.⁷³



Daniel D. McClain
Hearing Officer
For the Hearing Panel

⁶⁹ *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008).

⁷⁰ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13-16 (Nov. 14, 2008), *petition for review denied*, 347 F. App’x 692 (2d. Cir. 2009) (internal citations omitted).

⁷¹ Guidelines at 7 (Principal Consideration Nos. 8, 9).

⁷² Guidelines at 8 (Principal Consideration Nos. 13, 15).

⁷³ The Hearing Panel considered and rejected without discussion all other arguments by the parties.

Copies to:

Robert Juan Escobio (via overnight courier and first-class mail)

Rhonda A. Anderson, Esq. (via email and first-class mail)

Janine D. Arno, Esq. (via email and first-class mail)

Daniel Cristol, Esq. (via email)

Tino Lisella, Esq. (via email)

David B. Klafter, Esq. (via email)

Jennifer L. Crawford, Esq. (via email)