FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DAVID C. CANNATA (CRD No. 2408845), Respondent.	Disciplinary Proceeding No. 2013037857001 Hearing Officer–DW

NOTICE OF ERRATA

The Default Decision and Notice of Default Decision in this disciplinary proceeding were issued on June 6, 2016. The incorrect disciplinary proceeding number on those documents, 2010037857001, should be replaced with 2013037857001, as in the above caption.

David Williams
Hearing Officer

Dated: June 9, 2016

Copies to:

David C. Cannata (via first-class mail)
Artur M. Wlazlo, Esq. (via email and first-class mail)
Lara Thyagarajan, Esq. (via email)
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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DAVID C. CANNATA (CRD No. 2408845), Respondent.	Disciplinary Proceeding No. 2013037857001 Hearing Officer–DW **DEFAULT DECISION** June 6, 2016

Respondent David C. Cannata is barred from associating with any FINRA member firm in any capacity for (1) engaging in excessive trading in three customer accounts; (2) churning in those same accounts; and (3) failing to appear for testimony. Cannata is also ordered to pay restitution to customers in the amount of $1,566,298.14, plus prejudgment interest. In light of the bars, no additional sanctions are imposed against Cannata for willfully failing to disclose tax liens on his Form U4.

Appearances

For the Complainant: Artur Wlazlo, Esq., and Lara Thyagarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

FINRA's Department of Enforcement brought this disciplinary proceeding against David C. Cannata, alleging four counts in its Complaint: (1) excessive trading in the accounts of three customers while Cannata was associated with Craig Scott Capital, LLC ("CSC"), in violation of NASD Conduct Rule 2310, and FINRA Rules 2111 and 2010; (2) churning, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, as well as FINRA Rules 2020 and 2010; (3) failure to comply with requests for information issued by Enforcement staff in connection with its investigation into his trading, in

violation of FINRA Rules 8210 and 2010; and (4) willful failure to amend and timely disclose on his application for FINRA registration (as reflected on his Form U4) two tax liens totaling $189,449, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

II. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on December 22, 2015, and the Second Notice of Complaint on January 20, 2016, by certified mail to Cannata's address listed in the Central Registration Depository ("CRD address"). Although Enforcement served the Complaint on Cannata in accordance with FINRA rules, Cannata failed to answer or otherwise respond.

Thereafter, on March 16, 2016, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions, supported by the Declaration of Arthur M. Wlazlo ("Wlazlo Decl.") and 47 exhibits.[1] Cannata did not file a response.

For the reasons set forth below,[2] I find Cannata in default and grant Enforcement's motion for entry of a default decision.[3]

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Cannata first registered with FINRA as a General Securities Representative through a member firm in February 1995. He held the same registration at CSC from January 2012 to September 9, 2014.[4]

Although Cannata has not been registered with FINRA or associated with a FINRA member firm since that time, FINRA retains jurisdiction over him pursuant to Article V, Section 4 of its By-Laws. Enforcement filed its Complaint within two years after the effective date of termination of his registration, alleging misconduct that occurred while Cannata was associated with CSC and with failing to respond to requests for information during the two-year period after the termination of his registration.

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[1] On May 12, 2016, Enforcement supplemented its motion to clarify that it seeks restitution for losses incurred to investors as a result of Cannata's alleged misconduct.

[2] The factual findings in this decision are based on the allegations in the Complaint and the additional materials Enforcement filed with its motion.

[3] Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

[4] Wlazlo Decl. ¶¶ 5-7; Complainant's Exhibit ("CX-") 1.

B. Origin of the Investigation

FINRA staff began its investigation in this matter in August 2013, after Cannata's former customer, JB, filed an arbitration claim against him and CSC alleging, among other things, excessive and unsuitable trading in his account.[5]

C. Cannata Engaged in Excessive Trading

The Complaint's first cause of action alleges that Cannata violated NASD Conduct Rule 2310 as well as FINRA Rules 2111 and 2010 by excessively trading in the accounts of CSC customers JB, DB, and TD between March 2012 and April 2014.

NASD Conduct Rule 2310 requires that "in recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."[6] Thus, "a representative may make only such recommendations . . . as would be consistent with the customer's financial situation and needs."[7]

The rule is also violated where a representative's recommendations are quantitatively unsuitable, *i.e.*, the representative excessively trades the account.[8] "In either case, a representative may make only such recommendations—or effect such transactions in cases where the representative controls the account—as would be consistent with the customer's financial situation and needs."[9] "[E]xcessive trading occurs when a registered representative has control over trading in an account and the level of activity in that account is inconsistent with the customer's objectives and financial situation."[10]

The evidence and admitted allegations of the Complaint establish that between March 2012 and April 2014 Cannata made unsuitable recommendations for three clients—customers JB, DB, and TD—by directing excessive trading in their accounts. First, Cannata had *de facto*

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[5] Wlazlo Decl. ¶ 11.

[6] Cannata's violation of this provision is the gravamen of the claim. On July 9, 2012, during the misconduct, NASD Conduct Rule 2310 was superseded by FINRA Rule 2111, which contains a substantially similar requirement that all investment recommendations be based on a representative's diligent assessment of the suitability of the investment for the client. Violation of either provision also constitutes a violation of FINRA Rule 2010. *Wendell D. Belden*, 56 S.E.C. 496, 505 (2003).

[7] *Dep't of Enforcement v. Stein*, No. C07000003, 2001 NASD Discip. LEXIS 38, at *10 (NAC Dec. 3, 2001), *aff'd*, 56 S.E.C. 108 (2003).

[8] *Paul C. Kettler*, 51 S.E.C. 30, 32 (1992) ("[E]xcessive trading represents an unsuitable frequency of trading and violates NASD suitability standards.").

[9] *Dep't of Enforcement v. O'Hare*, No. C9B030045, 2005 NASD Discip. LEXIS 39, at *12 (NAC Apr. 21, 2005) (citation omitted).

[10] *Id.* at *15.

control over the customer accounts.[11] Cannata made all investment decisions, including the securities traded and the quantity of the trades; the customers were not consulted prior to trades; the customers were not familiar with the securities traded; and the customers did not independently evaluate Cannata's recommendations.[12] These facts sufficiently establish Cannata's control over the relevant trading activity.[13]

Second, Cannata's trading strategy in each client's account generated extraordinary levels of activity inconsistent with the clients' objectives and financial circumstances. Rather than recommend investments calculated to protect his clients' capital and provide income, Cannata embarked on a speculative and aggressive short-term strategy whereby he purchased securities for client accounts in companies just prior to earnings announcements and then sold the stock immediately thereafter.[14] After selling the stock, Cannata used the proceeds to buy even more shares of other companies about to make earnings announcements, and continued this cycle of trading until the accounts were depleted of assets.[15]

For instance, in the five months between March and July 2012, Cannata engaged in 128 trades in the account of JB—a 92-year-old retiree—generating $95,045 in commissions and fees.[16] Between July 2013 and April 2014, Cannata engaged in 1,680 trades in customer DB's account, generating an astounding $690,803 in commissions and fees.[17] From February to April 2013, Cannata engaged in 177 trades in the account of TD, generating commissions and fees of $131,290.[18] The clients sustained losses ranging from $114,171 to $1,263,527 as a result of the strategy.[19]

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[11] Control may be established where a customer expressly agrees to give the broker discretion to trade the account, or absent that, where the broker exercises *de facto* control of the account. *Dist. Bus. Conduct Comm. v. Gates*, No. C05930020, 1994 NASD Discip. LEXIS 190, at *24 (Nov. 22, 1994). *De facto* control may be established "where the customer routinely follows a registered representative's recommendations." *Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *18 (May 29, 2015).

[12] Complaint ("Compl.") ¶¶ 17-19, 26-27, 36-40, 50-51; Wlazlo Decl. ¶¶ 31-32, 40-42, 50.

[13] *Richard G. Cody*, 2011 S.E.C. LEXIS 1862, at *41 (May 27, 2011) ("A representative exercises *de facto* control if the customers were not consulted, nor typically even made aware of, the particular trades executed in their account until well after the fact.") (quotation omitted).

[14] Compl. ¶ 10; Wlazlo Decl. ¶ 38.

[15] *Id*.

[16] CX-13.

[17] CX-13.

[18] CX-13.

[19] CX-13; Compl. ¶¶ 28, 41, 52; Wlazlo Decl. ¶¶ 34, 43, 51.

I find Cannata's trading on behalf of each of the three clients excessive. There is no single test for excessive trading activity, but precedent dictates consideration of turnover rate[20] and cost-to-equity ratio.[21] An annualized turnover rate greater than six is generally regarded as excessive.[22] A cost-to-equity ratio above 20% similarly indicates excessive trading.[23]

The trading here substantially exceeded both benchmarks. For the account of JB, the annualized turnover rate was 262, and the annualized cost-to-equity ratio is 327%.[24] For DB, the turnover rate was 210, and cost-to-equity ratio is 169%.[25] The turnover rate was 172 and cost-to-equity ratio is 618% for TD.[26] That is, the customers would have had to realize an annual rate of return of between 169% and 618% to simply break even after the commissions and fees that resulted from Cannata's trading. And at the time Cannata recommended these transactions, he knew that the investors' investment objectives were "generating investment income," employing a "conservative buy-and-hold" strategy, and taking "average investment risks."[27]

Based on the magnitude and effect of his trading, I find that Cannata violated NASD Conduct Rule 2310 and FINRA Rules 2111 and 2010 by excessively trading in customer accounts.

D. Cannata Engaged in Churning

The second cause of the Complaint alleges that Cannata's excessive trading also constituted "churning." As explained above, excessive trading requires proof of a representative's control over trading in an account, as well as a level of trading activity in the account inconsistent with the customers' objectives and financial situation.[28] Where a third element is present—intent to defraud or reckless disregard for the client's interests, *i.e.*, scienter—the misconduct also constitutes fraudulent churning.[29] Churning violates FINRA Rule

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[20] The annual turnover rate measures the number of times in a year that the securities in an account are replaced by new securities. *Dep't of Enforcement v. Kelly*, No. E9A2004048801, 2008 FINRA Discip. LEXIS 48, at *16 (NAC Dec. 16, 2008).

[21] Cost-to-equity ratio measures the percentage of return on a customer's average net equity needed to pay broker-dealer commissions and other expenses. "In other words, the cost-to-equity ratio measures the amount an investment would have to appreciate to break even." *Rafael Pinchas*, 54 S.E.C. 331, 340 (1999).

[22] *Jack H. Stein*, 56 S.E.C. 108, 118 (2003).

[23] *See, e.g.*, *Pinchas*, 54 S.E.C. at 340 ("[W]e have previously found that a cost-to-equity ratio in excess of 20% indicates excessive trading.").

[24] CX-13.

[25] CX-13.

[26] CX-13.

[27] Compl. ¶¶ 22, 31, 44; Wlazlo Decl. ¶¶ 26, 36, 45.

[28] *Pinchas*, 54 S.E.C. at 337.

[29] *J. Stephen Stout*, 54 S.E.C. 888, 912-13 (2000).

2020[30] and Section 10(b) of the Exchange Act, which prohibits the use of "any manipulative or deceptive act or practice" in connection with the purchase or sale of a security, and Exchange Act Rule 10b-5, which forbids "any device, scheme, or artifice to defraud" and "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."[31]

As set forth above, Cannata exercised *de facto* control over the accounts of customers JB, DB, and TD, and engaged in excessive trading in each account. Whether the misconduct amounts to churning turns on the question of whether Cannata acted deceptively. The circumstances here, including the excessive volume of transactions in light of the nature and objectives of the customer accounts, indicate that Cannata deceptively intended to profit at his customers' expense.[32]

The Complaint alleges, and Cannata admits through his default, that he acted with scienter by knowingly or recklessly disregarding his customers' interests by seeking to maximize his own compensation.[33] In addition, I find both the high turnover rate and cost-to-equity ratio compelling evidence establishing that Cannata recommended and executed the trades in the accounts of customers JB, DB, and TD for his own benefit, without regard for his clients' resources or best interests. There is no evidence that would justify the quantity of trading directed by Cannata given the investment objectives of his clients. Cannata acted with scienter.

Accordingly, I find that Cannata violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010[34] by churning the accounts of customers JB, DB, and TD.

E. Failure to Respond to Enforcement's Requests for Testimony

The Complaint's third cause alleges that Cannata failed to appear and provide sworn testimony as requested by FINRA pursuant to FINRA Rule 8210.[35] FINRA Rule 8210(a) authorizes FINRA staff, for purposes of an investigation, examination or proceeding, to require a

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[30] FINRA Rule 2020 proscribes fraud in language similar to Section 10(b), stating: "No member shall effect any transaction in, or induce the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance." A violation of Section 10(b) is also a violation of FINRA Rule 2020. *Dep't of Enforcement v. Thomas Weisel Partners, LLC*, No. 2008014621701, 2013 FINRA Discip. LEXIS 1, at *15 (NAC Feb. 15, 2013).

[31] 17 C.F.R. 240.10b-5.

[32] *Dep't of Enforcement v. Castle Sec. Corp.*, No. C3A010036, 2004 NASD Discip. LEXIS 1, at *14 (NAC Feb. 19, 2004).

[33] Compl. ¶ 126.

[34] Committing fraud and other violations of law and FINRA Rules is inconsistent with the high standards of ethical conduct required by Rule 2010. *See Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir. 1966), *cert. denied*, 385 U.S. 817 (1966).

[35] Compl. ¶¶ 129-133.

person subject to FINRA's jurisdiction to testify with respect to any matter involved in the investigation, examination or proceeding.

At first Cannata cooperated with Enforcement's investigation into his trading in the customer accounts; Cannata attended an on-the-record interview. But later he failed to appear for subsequent requests to complete his testimony.[36] No fewer than six times Enforcement sent Cannata a Rule 8210 request letter for his testimony, and each time he failed to appear. Cannata failed to attend scheduled testimony on January 29, 2015; February 25, 2015; March 16, 2015; March 30, 2015; May 22, 2015; and finally on May 29, 2015.[37] The first few letters were received by Cannata's counsel, who informed Enforcement that at various times Cannata would not attend "to accommodate his schedule," or because "he (and some of his family) are ill," or because he was in a FINRA arbitration proceeding, and on another occasion counsel did "not know the exact reason."[38] Later, counsel advised Enforcement that he was no longer representing Cannata.[39] Thereafter, Cannata told Enforcement directly (and without excuse) that he would not attend his testimony as scheduled for May 22 or 29, 2015.[40] By failing to appear and testify, Cannata violated FINRA Rules 8210 and 2010.[41]

F. Cannata's Undisclosed Tax Liens

Article V, Section 2(c) of FINRA's By-Laws requires an associated person to report certain disclosable events on a Form U4 and keep the form updated and accurate. The By-Laws also require that supplemental amendments to the Form U4 be made within 30 days of the filer's learning of the facts or circumstances requiring an amendment. Consistent with these requirements, FINRA Rule 1122 prohibits associated persons from filing inaccurate information and requires them to correct any information previously provided when they learn that any previous submission is incomplete or inaccurate.

Any associated person who willfully makes a false or misleading statement of material fact on a Form U4 or fails to report a material fact, is subject to statutory disqualification under Section 3(a)(39) of the Securities Exchange Act and Article III, Section 4 of FINRA's By-Laws. A fact is material if it "significantly alter[s] the 'total mix' of information made available," such that there is a "substantial likelihood that a reasonable investor would consider it important in deciding whether to buy or sell shares."[42] The National Adjudicatory Council has held that

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[36] *See* Wlazlo Decl. ¶ 13.

[37] Wlazlo Decl. ¶¶ 64, 73, 81, 91, 103, 105.

[38] Wlazlo Decl. ¶¶ 61, 72, 80, 89.

[39] Wlazlo Decl. ¶ 101.

[40] Wlazlo Decl. ¶¶ 102, 104.

[41] A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates FINRA Rule 2010. *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

[42] *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

"essentially all of the information that is reportable on the Form U4 may be considered material."[43]

The existence of unsatisfied judgments or liens must be disclosed on a Form U4. Question 14M of the Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" On March 18, 2014, Cannata signed and submitted an amended Form U4 reporting no liens against him, representing that he would timely update the form with material changes.[44]

Contrary to Cannata's representations, two liens were entered against him in March and May 2013, for $35,953 and $153,496, respectively.[45] On April 25, 2014, CSC's Chief Compliance Officer discovered the liens and asked Cannata if he was aware of them.[46] In response, Cannata signed a statement acknowledging that he first learned of the liens on about January 15, 2014.[47] On April 29, 2014, Cannata filed an updated Form U4 disclosing both liens.[48]

Cannata's failure to disclose the two liens on his Form U4 until April 29, 2014, more than a year after the liens were entered against him—and more than three months after he acknowledged being aware of them—establishes his willful[49] failure to update his U4 within 30 days after learning of information required to be disclosed, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1120 and 2010. Cannata is subject to statutory disqualification as a result of his willful violation.

IV. Sanctions

A. Excessive Trading and Churning

For excessive trading or churning, the FINRA Sanction Guidelines recommend a fine of $5,000 to $110,000, disgorgement of any financial benefit, and a suspension in any or all capacities for 10 business days to one year. In egregious cases, the Guidelines recommend

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[43] *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (NAC July 7, 2007).

[44] CX-45.

[45] Compl. ¶¶ 110-111.

[46] Compl. ¶¶ 112-113.

[47] Compl. ¶ 113; CX-44.

[48] Compl. ¶ 114; CX-47.

[49] An associated person willfully violates federal securities laws so long as the "person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). It is unnecessary to find that Cannata intentionally violated FINRA rules, only that he knew what he was doing when he did not timely amend his Form U4 to disclose the two liens. *See Mathis v. SEC*, 671 F.3d 210, 216-18 (2d Cir. 2012) (finding that respondent was statutorily disqualified when he voluntarily failed to amend Form U4 to disclose tax liens). The record demonstrates—and Cannata admits by his default—that he knew about the two liens but failed to amend his Form U4 for three months, and even then only after inquiry by his firm's Chief Compliance Officer.

consideration of longer suspension or a bar.[50] Because the first two causes, involving unsuitable and excessive trading as well as churning, are part of the same course of conduct, Cannata's violations are appropriately considered collectively in imposing sanctions.[51] On the facts presented here, I conclude that a bar is appropriate.

Cannata's conduct was egregious. One of his clients was a 92-year-old retiree, whom Cannata knew did not understand the trades and strategy he employed. And Cannata's conduct was not an aberration—he systematically engaged in numerous violative acts over an extended period of time.[52] For instance, in the account of DB, Cannata engaged in 1,680 trades over the nine months between July 2013 and April 2014—approximately 186 trades per month.[53] The trades generated more than $1.2 million in losses to the client and over $690,000 in commissions and fees to Cannata.[54] The extraordinary level of activity over a short period in each of the customer accounts combined with very high cost-to-equity ratios demonstrate that Cannata was trading for his own benefit in the accounts. The sheer volume of the excessive trades is aggravating.[55] Without question, Cannata's excessive trading was depleting his customers' accounts while generating exorbitant commissions, aggravating Cannata's misconduct.[56] The record shows no mitigating circumstances that would justify a lesser sanction in this case. A bar is appropriate and will be imposed.

The Sanction Guidelines also provide for restitution in appropriate cases. Restitution is a traditional remedy used to restore the *status quo ante* where a victim otherwise would unjustly suffer loss. Adjudicators may order restitution when an identifiable person has suffered a quantifiable loss proximately caused by a respondent's misconduct.[57] "Restitution . . . is a particularly fitting sanction in cases of unsuitable recommendations."[58] As the SEC explained, "[a]s between [the customer], who was placed in an unsuitable investment and [the broker], who recommended it, equity requires [the broker], as the person responsible for the loss, to bear its

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[50] FINRA Sanction Guidelines at 77 (2013) ("Guidelines"), http://www.finra.org/Industry/Sanction-Guidelines.

[51] *Dep't of Enforcement v. Murphy*, No. 2005003610701, 2011 FINRA Discip. LEXIS 42, at *109 (NAC Oct. 20, 2011) (considering, among other violations, "unsuitable trading, excessive trading, and churning violations as part of the same course of conduct"), *aff'd*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933 (July 2, 2013).

[52] *See* Guidelines at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9) (considering whether respondent engaged in numerous acts and whether the misconduct occurred over an extended period of time).

[53] CX-13.

[54] *Id*.

[55] *See, e.g., Dist. Bus. Conduct Comm. v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *15-16 (NAC June 15, 1999).

[56] *Dep't of Enforcement v. Davidofsky*, No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *39 (NAC Apr. 26, 2013) (broker's focus "on a trading strategy designed to enrich himself" is aggravating).

[57] Guidelines at 4 (General Principles Applicable to All Sanction Determinations, No. 5).

[58] *David Joseph Dambro*, 51 S.E.C. 513 (1993).

burden and to return the customer to the position occupied prior to the improper recommendation."[59]

Here, the customers collectively suffered losses of $1,566,298.14, proximately caused by Cannata's misconduct. I will order Cannata to pay restitution to JB, DB, and TD in this amount, plus interest from April 2014 (the date of the last instance of unauthorized trading) until paid in full.

B. Failure to Respond to Requests for On-the-Record Testimony

Where a respondent fails to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be "standard."[60] The Guidelines recommend a bar even when a respondent provides a partial but incomplete response, unless the respondent can "demonstrate that the information provided substantially complied with all aspects of the request."[61] The Principal Considerations where a respondent provides partial but incomplete response are: (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explains valid reasons for the deficiencies in the response.[62]

These considerations counsel that Cannata's violation was serious. The testimony Enforcement sought to elicit was crucial to its investigation of Cannata's improper trading activity. And while Cannata initially provided testimony, he ultimately refused to provide additional necessary evidence despite repeated requests from Enforcement, and without any substantial basis for his refusal. Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."[63] The rule thus "is at the heart of the self-regulatory system for the securities industry" and, when members delay their responses or neglect entirely their responsibilities under the rule, they "undermine the ability of [FINRA] to . . . protect the public interest."[64]

Cannata disregarded his responsibility to comply with Rule 8210. There are no mitigating factors. Accordingly, I conclude that the appropriate sanction for the violation is a bar.

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[59] *Id*.

[60] Guidelines at 33.

[61] *Id*.

[62] *Id.*

[63] *Richard J. Rouse*, 51 SEC 581, 584 (1993).

[64] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009).

C. Failure to Disclose Tax Liens

The Guidelines for filing a false, misleading, or inaccurate Form U4 recommend a fine of $2,500 to $73,000 for an individual's late filing of amendments and, in egregious cases, a suspension in any or all capacities (of up to two years) or a bar.[65] Among the principal considerations in determining sanctions is the nature and significance of the information at issue. Here, the information was highly significant; disclosure of tax liens indicating Cannata was heavily indebted to government taxing authorities for over $186,000 might have resulted in closer scrutiny of his conduct.[66]

I conclude that Cannata's misconduct is serious and warrants a suspension in all capacities for 30 business days in addition to a $10,000 fine. However, in light of the bars imposed for the other violations described above, I will not impose sanctions for this violation. However, Cannata is subject to statutory disqualification as a result of his willful violation.

V. Order

Cannata is barred from associating with any FINRA member firm in any capacity for (1) engaging in excessive trading, in violation of NASD Conduct Rule 2310 as well as FINRA Rules 2111 and 2010; (2) churning, in violation Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010; and (3) failing to provide testimony, in violation of FINRA Rules 8210 and 2010. While Cannata failed to disclose two liens on his Form U4 in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, no sanction is imposed for this violation in light of the bars imposed for the other violations, although he is subject to statutory disqualification. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

Additionally, Cannata is ordered to pay restitution to JB, DB, and TD in the principal amount of $1,566,298.14, plus interest from April 2014, until paid in full. Interest shall accrue at

[65] Guidelines at 69-70.

[66] *See Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *26 (NAC Mar. 9, 2015) (failure to disclose tax liens on Form U4 was material—"[t]ruthful answers to Form U4 questions are critical because they can serve as an early warning mechanism, identifying individuals with troubled pasts or suspect financial histories.") (quotation omitted).

the rate set in 26 U.S.C. § 6621(a)(2).[67] If this decision becomes FINRA's final disciplinary action, the bars shall take effect immediately.[68]

David Williams
Hearing Officer

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Lara Thyagarajan, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

[67] The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

[68] The amounts due to JB, DB, and TD are $188,598.54, $1,263,527.87, and $114,171.82, respectively. The customers identified here by their initials are identified by name in an addendum to this decision that is served only on the parties.

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DAVID C. CANNATA (CRD No. 2408845), Respondent.	Disciplinary Proceeding No. 201037857001 Hearing Officer–DW

ADDENDUM TO DEFAULT DECISION

JB: James Briggs

DB: Donald Bankston

TD: Tommy DeWitt