

Supplemental Information for Firms and Individuals Directed to Supply Information Pursuant to FINRA Rule 8210 (Information and Testimony Requests)

1. Definition of Key Terms

- a. **“Document”**: The term “document” means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.
- b. **“Control”**: For purposes of Rule 8210, whether a particular document is within a member firm’s or person’s “control” is determined by the facts and circumstances of each situation. Generally, a document will be considered to be in the control of a member firm or person if the firm or person has the legal right, authority or ability to obtain the document upon demand.¹

2. Unavailable Documents and Information

If any of the requested documents or information do not exist, please state so in the response and explain why they do not exist.

3. Document Production

- a. **Electronic Documents**: Electronic documents (including electronic communications) must be produced in their native format, in their entirety, and as maintained in the normal course of business (including all attachments, embedded objects, and original metadata). Provide a separate file or series of files for each individual (i.e., custodian) from whom documents are produced or, if applicable, for each system or application from which documents are produced and include an index identifying each custodian, all email accounts or aliases used or potentially used by the custodian and the system or application from which the electronic communications are being produced.

Do not produce paper copies unless there is no electronic source for the electronic documents (including electronic communications).

- b. **Other Production Options**: Documents may be provided on a portable media device (PMD). The PMD (or the files stored on the PMD) *must be encrypted* as required by Rule 8210(g). (See Regulatory Notice 10-59 Nov. 2010.) The access password must be provided in a *separate communication* to the staff member who issued the Rule 8210 request at the email address included in that request.

4. Withholding or Redacting Information

¹ See 77 Fed. Reg. 74253, 74254 (explaining that the clarification of Rule 8210 to include “possession, custody or control” parallels language in the Federal Rules of Civil Procedure regarding document requests and subpoenas for documents).

If any responsive document or information is withheld or redacted, specifically identify what is being withheld, indicate its location, and state the basis for withholding it. If any documents or information are withheld or redacted on the basis of attorney-client privilege or attorney work product, provide a privilege or redaction log as applicable. The log should include at a minimum the following information separately for each document or piece of information withheld or redacted: (i) the basis for privilege claim; (ii) the subject or the title of the document; (iii) the type of document or information (e.g., letter, memo, email, etc.); (iv) the date the document or information was created or sent; (v) the full name and title/position of each author and, if different, sender of the document or information, expressly identifying any attorney; (vi) the recipients of the document or information, including the full name and title/position of each recipient, expressly identifying any attorneys; and (vii) a description of any attachments also being withheld.

5. Documents Containing Bank Secrecy Act (BSA) Materials

Documents contains any BSA materials, including Suspicious Activity Reports (SARs), *must* be provided in a separate production and under a separate cover letter indicating that the production includes BSA Confidential Information. BSA Confidential Information includes information revealing the existence of: (i) a specific SAR or (ii) a member firm's affirmative decision not to file a SAR.

BSA Confidential Information may be submitted by PMD, and that device *must be encrypted* (see Rule 8210(g) and Notice 10-59) and labeled "BSA Confidential Information." The access password must be provided in a *separate communication* to the staff member who issued the Rule 8210 request at the email address included in that request. Any file containing BSA Confidential Information submitted via FINRA Gateway must include "BSA Confidential" in its filename. Please notify me prior to sending any BSA materials.

6. Confidentiality

FINRA's investigations are confidential as a matter of policy. Nonetheless, FINRA may sometimes provide access to its investigative files to other regulatory and law enforcement authorities, and, if subpoenaed, to litigants in civil actions or securities-related arbitrations. In addition, pursuant to FINRA's Code of Procedure, FINRA is required to produce documents and transcripts to respondents during discovery. We cannot (i) entertain requests for confidential treatment of any information or documents provided in response to this request, (ii) give notice of any subpoena or access request that encompasses any such information or documents, or (iii) return documents when this investigation is completed.