FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. BRIAN J. PAVELKO (CRD No. 637352), Respondent.	Disciplinary Proceeding No. 2020066757804 Hearing Officer–LOM **HEARING PANEL DECISION** June 17, 2026

Respondent failed to comply with four requests for information and documents made pursuant to FINRA Rule 8210. For this misconduct, which violated FINRA Rules 8210 and 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances

For the Complainant: Maureen Mueller, Esq., Alex Ehmke, Esq., and Joshua Bone, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Aegis J. Frumento, Esq., and Stephanie Korenman, Esq., Stern Tannenbaum & Bell LLP

DECISION

I. Introduction

Respondent, Brian J. Pavelko, did not respond to four requests for information and documents that FINRA's Department of Enforcement issued pursuant to FINRA Rule 8210. Enforcement then filed a one-count Complaint alleging that Respondent's failure to comply with the four Rule 8210 requests violated FINRA Rules 8210 and 2010. A one-day hearing was held on April 9, 2026, before a three-person Hearing Panel.[1]

[1] Two witnesses testified at the hearing, Respondent and a case manager investigator with Enforcement, Kelly Edwards. Their testimony is cited with an abbreviation for transcript, their initials in parentheses, and the page number (*e.g.*, Tr. (BJP) 145). One Complainant's exhibit was admitted into evidence and marked CX-1. The joint exhibits were admitted and marked JX-1 through JX-27. The parties entered 39 paragraphs of joint stipulations in

Respondent argues that, as a matter of law, he did not have a duty to comply with the Rule 8210 requests because, according to Respondent, the requests were "improper"[2] and beyond FINRA's investigative and disciplinary authority.[3] As discussed below, the Hearing Panel rejects Respondent's defenses. In this decision, the Hearing Panel finds that Respondent violated FINRA Rules 8210 and 2010, explains the Hearing Panel's reasoning, bars Respondent from associating with any FINRA member in any capacity, and imposes costs.

II. Findings of Fact and Conclusions of Law

A. Respondent

From September 20, 2018, to March 3, 2022, Respondent was registered with FINRA as a General Securities Representative through an association with SW Financial LLC ("SW Financial").[4] Throughout his time at SW Financial, Respondent was a member of a team that helped source and manage private placement offerings.[5] Starting in January 2020, Respondent and the other representatives on his team were also affiliated with Tranquillum Capital Advisors ("Tranquillum"), a disclosed outside business activity.[6] Tranquillum was a conduit for sourcing private placement offerings that Respondent and his team could syndicate and sell through their association with SW Financial.[7]

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their Second Joint Statement of Stipulated Facts and Documents, which are referred to here by the abbreviation for stipulation and the relevant paragraph (*e.g.*, Stip. ¶ 5).

Prior to the hearing, each party filed a motion for summary disposition. The Hearing Officer deferred ruling on those motions in an order dated February 4, 2026. With the issuance of this decision following a hearing, the motions are **DENIED** as moot. Similarly, as stated at the Final Pre-Hearing Conference on March 19, 2026, the Hearing Officer deferred ruling on a motion by Enforcement to preclude Respondent from asserting advice of counsel as a defense to liability. The defense was not raised at the hearing and, thus, Enforcement's motion is now **DENIED** as moot.

The parties' briefs in connection with their summary disposition motions were incorporated by reference into their pre-hearing briefs. The following briefs are referenced in this decision: Memorandum of Law in Support of Department of Enforcement's Motion for Summary Disposition ("Enf. Sum. Disp. Br."), Memorandum of Law in Support of Respondent's Motion for Summary Disposition ("Resp't Sum. Disp. Br."), Department of Enforcement's Opposition to Respondent Brian J. Pavelko's Motion for Summary Disposition ("Enf. Opp'n Br."), Respondent's Opposition to DOE's Motion for Summary Disposition ("Resp't Opp'n Br."), Department of Enforcement's Pre-Hearing Brief ("Enf. PH Br."), and Respondent Brian J. Pavelko's Pre-Hearing Brief ("Resp't PH Br."). There were no post-hearing briefs.

[2] Resp't PH Br. 2.

[3] Resp't Sum. Disp. Br. 1–15; Resp't Opp'n Br. 15.

[4] Stip. ¶ 1.

[5] Stip. ¶ 3.

[6] *Id*.

[7] *Id*.

On March 3, 2022, SW Financial filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing Respondent's voluntary termination from the firm.[8]

Shortly after Respondent left SW Financial, on March 13, 2022, he became registered with FINRA as a General Securities Representative through an association with NI Advisors.[9] He was with that firm until it filed a Form U5 on December 23, 2025, disclosing Respondent's voluntary termination from the firm.[10]

B. Origin of this Proceeding

After Respondent joined NI Advisors, FINRA began investigating his conduct at his prior firm, SW Financial. The focus of FINRA's investigation was on Respondent's involvement with private placement offerings sourced through Tranquillum and an earlier disclosed outside business activity.[11]

In connection with the private placement investigation, on June 28, 2023, FINRA sent Respondent a request for documents and information pursuant to FINRA Rule 8210.[12] Among the documents sought by the June 2023 Rule 8210 request, were copies of Respondent's state and federal tax returns and bank account statements.[13] The June 2023 Rule 8210 request is not the subject of this disciplinary proceeding, but, because of what Respondent's financial records revealed, the June 2023 request led to the other four Rule 8210 requests that are at issue in this proceeding.

In response to FINRA's June 2023 Rule 8210 request, Respondent produced, among other items, copies of his bank account statements and various forms filed with his income tax returns for the years 2020 and 2021.[14] Respondent's bank account statements and income tax records showed that he had received pandemic-related unemployment compensation from the New Jersey Department of Labor, Division of Unemployment Insurance ("NJDUI") while he was working at SW Financial and receiving compensation from that firm and while he was also receiving compensation from his outside business activity, Tranquillum.[15]

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[8] Stip. ¶ 1.

[9] Stip. ¶ 2.

[10] *Id*.

[11] Stip. ¶ 7. The earlier disclosed outside business activity was First Capital Master Advisors. Respondent worked with it from September 2018 through December 2019. Stip. ¶ 7; *see also* Tr. (KE) 46–47.

[12] Stip. ¶ 6–7; Tr. (KE) 47; JX-14.

[13] Stip. ¶ 6; Tr. (KE) 48.

[14] Stip. ¶ 8.

[15] Stip. ¶¶ 5, 8. The documents Respondent produced included a Form 1099-NEC from SW Financial for the year 2021, Forms 1099-MISC and -NEC from Tranquillum for the tax years 2020 and 2021, and Forms 1099-G from the NJDUI for the years 2020 and 2021. Stip. ¶ 8.

Respondent later confirmed that in or around May 2020 he applied for Pandemic Unemployment Assistance (referred to here as "pandemic-related unemployment compensation" or as "PUA benefits") from NJDUI,[16] and NJDUI approved his application.[17] He received approximately $37,000 in PUA benefits between May 2020 and September 2021.[18] During the same period, Respondent received compensation totaling approximately $54,000 in connection with his work for SW Financial and Tranquillum.[19]

The information from Respondent's tax returns raised the question of what Respondent had said to the New Jersey authorities about his securities industry work and compensation in his application for pandemic-related unemployment compensation and in any subsequent submissions related to his PUA benefits. FINRA staff wanted to determine whether he had been

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[16] Stip. ¶ 4. In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, which created several temporary unemployment benefit programs, including the PUA benefits program. The PUA benefits program provided benefits to individuals who were unemployed or otherwise unable to work for various reasons relating to the COVID-19 pandemic and who were not otherwise eligible for state unemployment insurance benefits. Among others, independent contractors and freelancers were eligible for PUA benefits. *See Ireland v. United States*, 101 F.4th 1338, 1341 (Fed. Cir. 2024); 15 U.S.C. § 9021(a)(3) (defining "covered individual" eligible to receive pandemic-related unemployment compensation). The federal government provided PUA benefits through agreements with the states, which administered the program. *Ireland*, 101 F. 4th at 1341-42, 1344-46; *United States v. $6,973,984.14 in United States Currency*, No. CV-24-00331-PHX-SHD, 2026 U.S. Dist. LEXIS 12458, at *1–3 (D. Ariz. Jan. 23, 2026); *Tex. Ass'n for the Rights of the Unemployed v. Serna*, No. 1:22-CV-417-DAE, 2025 U.S. Dist. LEXIS 26259, at *5 (W.D. Tex. Feb. 12, 2025); *Witzke v. Donofrio*, No. 20-12594, 2020 U.S. Dist. LEXIS 203473, at *24 (E.D. Mich. Nov. 2, 2020). All federal unemployment benefits, including PUA benefits, expired nationwide in September 2021. *Joyce v. Dejoie*, No. 20-3193, 2022 U.S. Dist. LEXIS 2582, at *6 (E.D. La. Jan. 6, 2022).

[17] Stip. ¶ 5.

[18] Stip. ¶ 5. Forms 1099-G for the 2020 and 2021 tax years showed that Respondent had received unemployment compensation totaling $37,632. Stip. ¶ 8; JX-15; JX-16.

[19] Stip. ¶ 5. The totals for Respondent's income during the period between May 2020 and September 2021, when Respondent was simultaneously receiving compensation from his securities business at SW Financial and Tranquillum and pandemic-related unemployment compensation from the State of New Jersey, are based on a summary document prepared by Enforcement from Respondent's bank statements. JX-25; Tr. (KE) 58–63. For the period that Respondent had two income streams from SW Financial and Tranquillum and was at the same time receiving a third stream of income from the State of New Jersey in the form of pandemic-related unemployment compensation, Respondent had a total income of $91,601.75. JX-25.

Respondent's underlying tax statements cover compensation received over a whole tax year, so the numbers for his securities-related business income are different on a per annum basis. *See* JX-17 (Form 1099-Misc. for tax year 2020 reflecting that Respondent received $43,260.04 that year from Tranquillum); JX-18 (Form 1099-NEC for tax year 2021 reflecting that Respondent received $20,250 that year from Tranquillum); JX-19 (Form 1099-NEC for tax year 2021 reflecting that Respondent received $19,034.61 that year in non-employee compensation from his FINRA member firm, SW Financial). There is no tax record for the tax year 2020 to show what Respondent earned from SW Financial that year.

The underlying tax statements for Respondent's PUA benefits support the total calculated from his bank statements. *See* JX-15 (Form 1099-G for tax year 2020 reflecting that Respondent received $18,285 in unemployment compensation that year from the State of New Jersey); JX-16 (Form 1099-G for tax year 2021 reflecting that Respondent received $19,347 in unemployment compensation that year from the State of New Jersey).

truthful in describing his securities business and compensation.[20] As Respondent testified later in an on-the-record interview ("OTR"), he obtained his PUA benefits through an on-line self-certification program.[21]

C. Two Rule 8210 Requests Investigating Respondent's Potential Dishonesty About His Securities Business and Income

FINRA opened an investigation into whether Respondent had made material misrepresentations or omissions in his application for pandemic-related unemployment compensation about his employment with, and income from, SW Financial and Tranquillum.[22] FINRA staff also became concerned that Respondent may have provided ongoing misrepresentations about his securities industry compensation when he regularly checked-in with the NJDUI.[23] If Respondent did make such misstatements about his securities business and compensation for the purpose of obtaining pandemic-related unemployment compensation that he may not have been entitled to receive, Enforcement considered that such misconduct would be a violation of FINRA's ethical conduct rule, FINRA Rule 2010.[24] The investigation was focused on Respondent's potential violation of Rule 2010 and his trustworthiness to be in an industry that relies on the honesty of its participants.

Pursuant to that investigation, Enforcement sent Respondent the first two Rule 8210 requests at issue in this proceeding, one on November 28, 2023, and the other on February 13, 2024.[25]

1. November 28, 2023, Rule 8210 Request

The November 28, 2023, Rule 8210 request sought copies of Respondent's "applications (or whatever other submissions [he] provided)" to the NJDUI in seeking pandemic-related unemployment compensation.[26] The Rule 8210 request further instructed Respondent that, if he did not already possess a copy of his application, he should request a copy from NJDUI "as soon

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[20] Tr. (KE) 62–63, 66–67.

[21] *See infra* Part II.D; JX-7. The CARES Act required applicants to self-certify an inability to work due to COVID. 15 U.S.C. § 9021(a)(3)(A)(ii). The self-certification system was vulnerable to fraud, as illustrated by *$6,973,984.14 in United States Currency*, 2026 U.S. Dist. LEXIS 12458, which involved a forfeiture of over $6 million derived from a scheme to defraud using online applications for PUA benefits. *See also United States v. Dean A. Tran*, No. 23-10299-FDS2024, U.S. Dist. LEXIS 227761, at *2–3, *11–13 (D. Mass. Dec. 16, 2024) (defendant convicted of wire fraud when he submitted weekly certifications of his continuing eligibility for PUA benefits, claiming not to have worked or earned income, when in fact he had).

[22] Enf. Sum. Disp. Br. 3; Declaration of Kelly Edwards in Support of Department of Enforcement's Motion for Summary Disposition ("Edwards Decl.") ¶¶ 6–7; Tr. (KE) 126–27.

[23] Tr. (KE) 96–97.

[24] Enf. Sum. Disp. Br. 3; Edwards Decl. ¶¶ 6–7; Tr. (KE) 66-67.

[25] JX-1; JX-3.

[26] Stip. ¶ 10; JX-1, at 2.

as possible."[27] To assist him, the Rule 8210 request provided a website link and information about requesting the documents from the NJDUI.[28] Respondent received the November 28, 2023, Rule 8210 request.[29]

Respondent's response to the Rule 8210 request was due on or before December 19, 2023.[30] On December 19, 2023, at 11:58 p.m., Respondent replied to FINRA through FINRA's Request Manager system that he did not possess a copy of his application.[31] He produced a record reflecting that he had requested a copy of the application from NJDUI that afternoon.[32] Accordingly, Respondent asked for an extension of time to respond to the Rule 8210 request,[33] and FINRA agreed to give him additional time.[34]

On January 31, 2024, and February 5, 2024, FINRA emailed Respondent for an update on his efforts to obtain a copy of his application.[35] FINRA's February 5, 2024, email informed him that if he did not respond by February 9, 2024, another Rule 8210 request would be issued.[36]

Respondent did not respond to FINRA's emails and did not produce a copy of his application for pandemic-related unemployment compensation.[37]

2. February 13, 2024, Rule 8210 Request

On February 13, 2024, FINRA sent Respondent a second Rule 8210 request letter.[38] The second request letter informed Respondent that he was in violation of FINRA Rule 8210 because he had failed to produce his application for pandemic-related unemployment compensation as sought by the November 28, 2023, Rule 8210 request.[39] Respondent received the second request letter.[40]

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[27] JX-1, at 2.

[28] JX-1, at 2 n.1.

[29] Stip. ¶ 11.

[30] JX-1, at 2.

[31] Stip. ¶ 12.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] Stip. ¶ 13.

[36] *Id*.

[37] Stip. ¶ 14.

[38] Stip. ¶ 15; JX-3.

[39] Stip. ¶ 15; JX-3, at 2.

[40] Stip. ¶ 16.

The second Rule 8210 request letter set March 5, 2024, as the deadline to produce the requested information.[41] On the March 5 due date, Respondent did not produce his application for pandemic-related unemployment compensation. Instead, he copied Enforcement staff on an email he sent to the New Jersey Government Records Council ("NJGRC") inquiring about the status of his request to NJDUI for a copy of his application.[42]

About three weeks later, on March 27, 2024, having heard nothing from Respondent, Enforcement staff contacted the NJGRC directly by email about Respondent's request for a copy of his application for PUA benefits.[43] Enforcement copied Respondent on the email sent to NJGRC.[44] The next day, on March 28, the NJGRC responded to Enforcement staff.[45] The NJGRC told Enforcement that it had already informed Respondent on March 6, 2024, that it could not assist with his request and that he should contact the New Jersey Department of Labor directly for an update on the status of his request.[46] The NJGRC attached a copy of its March 6, 2024, email to Respondent to the email that NJGRC sent Enforcement on March 28.[47]

Enforcement sent an email to Respondent on March 29, 2024, regarding the status of Respondent's effort to obtain a copy of his application for PUA benefits.[48] The staff set a deadline of April 5, 2024, for Respondent to contact the Department of Labor for an update on the status of his request for a copy of his application for PUA benefits.[49] On April 8, 2024, Respondent requested more time to respond to the request.[50] Enforcement set April 16 as the new deadline.[51] On April 17, Respondent notified FINRA by email that he had requested an update from the Department of Labor on the status of his request for a copy of his PUA benefits application.[52] He also provided supporting documentation to show he had requested the update.[53]

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[41] Stip. ¶ 15; JX-3, at 2.

[42] Stip. ¶ 17.

[43] Stip. ¶ 18.

[44] *Id*.

[45] Stip. ¶ 19.

[46] *Id*.

[47] *Id*.

[48] JX-5; Tr. (KE) 80.

[49] Stip. ¶ 20.

[50] Stip. ¶ 21.

[51] *Id*.

[52] Stip. ¶ 22.

[53] *Id*.

D. Respondent's OTR Testimony Regarding His Application for Pandemic-Related Unemployment Compensation

On April 19, 2024, FINRA sent Respondent a letter requesting that he appear for an OTR pursuant to FINRA Rule 8210 on May 8, via Zoom videoconference.[54] Respondent requested that the OTR be rescheduled for May 9, which it was.[55]

On May 9, 2024, Respondent appeared at his OTR and testified about various matters, including his receipt of pandemic-related unemployment compensation while he was working at SW Financial.[56] At the beginning of his OTR, Enforcement staff reminded Respondent that he was giving testimony pursuant to FINRA Rule 8210 and that the failure to answer any questions truthfully could violate FINRA Rule 8210.[57]

Respondent explained in his OTR that he was a "1099 gig worker" and not a salaried employee at SW Financial. He thought that during the COVID pandemic a 1099 worker could collect pandemic-related unemployment compensation based on a percentage of income lost due to the pandemic.[58] "[A]s a gig worker," he testified, "if you lost the majority of your income or, let's say, if you had ten streams of income and you lost eight of them that you are still entitled to unemployment."[59] He understood that the system did not apply the same to a 1099 worker as it did to workers who received W-2s.[60] "[A]s a 1099 worker, you could have 10, 20, streams of income, but if Covid affected 90% of them, you're still working . . . ."[61] He continued, "[W]ith a W-2, you're either working or you're not. There's no in between."[62]

With the understanding that he could file for pandemic-related unemployment compensation even if he was still working, Respondent filed for PUA benefits in spring of 2020.[63] He acknowledged in his OTR testimony that the basis for his filing was that he had lost the majority of his income.[64] He said when COVID hit it "pretty much shut the City down, so it

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[54] Stip. ¶ 23.

[55] *Id*.

[56] Stip. ¶ 24; JX-7.

[57] Stip. ¶ 24.

[58] JX-7, at 5 (pp. 66–69 of OTR transcript).

[59] JX-7, at 5 (p. 66 of OTR transcript).

[60] JX-7, at 5 (p. 69 of OTR transcript).

[61] JX-7, at 7 (p. 75 of OTR transcript).

[62] JX-7, at 7 (p. 75 of OTR transcript).

[63] JX-7, at 4 (p. 64 of OTR transcript).

[64] JX-7, at 5 (p. 66 of OTR transcript).

made [it] very difficult in the market . . . to get people to invest in something that's new without being able to see them face-to-face . . . ."[65] "[T]here was no money coming in."[66]

It is unclear from Respondent's OTR testimony, however, precisely what he told NJDUI about his employment with his broker-dealer firm or his compensation from his securities business. Respondent filled out the application for unemployment benefits on-line[67] and told Enforcement he did not have a copy.[68] He testified that he researched the eligibility requirements on-line and by making telephone calls, but that it was confusing and hard to get information.[69] He did not know the percentage of lost income needed to be eligible for benefits.[70] He also did not remember the kinds of questions he was required to answer on the application[71] or the information that he had to supply to certify at regular intervals that he still qualified for benefits.[72] When specifically asked if he had disclosed to NJDUI his receipt of $12,000 to $14,000 in connection with a particular offering, Respondent testified "I don't recall specifically."[73] Respondent seemed to suggest that if he had reported in his regular check-ins with NJDUI that he had made money from SW Financial for a portion of a month, his unemployment benefits would have been cut off and he would have needed to reapply again for the following month.[74] Although his testimony was not entirely clear, he seemed to admit that he "did not report money from SW Financial" at periodic check-ins with the New Jersey authorities out of concern that he would be cut off and have to reapply for benefits.[75]

Although Respondent requested documents related to his application for pandemic-related compensation from NJDUI on December 19, 2023,[76] he testified at his May 9, 2024,

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[65] JX-7, at 4 (p. 65 of OTR transcript).

[66] JX-7, at 4 (p. 65 of OTR transcript).

[67] JX-7, at 5 (p. 69 of OTR transcript).

[68] JX-7, at 4 (p. 64 of OTR transcript).

[69] JX-7, at 5 (pp. 66–69 of OTR transcript).

[70] JX-7, at 5 (pp. 67–68 of OTR transcript).

[71] JX-7, at 6 (pp. 70–71 of OTR transcript).

[72] JX-7, at 6 (pp. 72–73 of OTR transcript).

[73] JX-7, at 7 (p. 77 of OTR transcript).

[74] JX-7, at 7-8 (pp. 77–79 of OTR transcript).

[75] JX-7, at 8 (pp. 78–79 of OTR transcript):

> Q. And so did you, you didn't report making money from SW Financial because you did not want that [reapplication process] to happen, is that right?
> A. I did not report money from SW Financial.
> Q. Because you didn't want to lose the unemployment benefits, correct?
> A. Yeah, I guess."

[76] Stip. ¶¶ 12, 25.

OTR that he still did not have a copy of them.[77] Subsequent events, as discussed below, caused Enforcement to have doubts about whether Respondent testified truthfully at his OTR when he said he was not in possession of a copy of his application for pandemic-related unemployment compensation.

E. Respondent's Refusal to Produce His Application for Pandemic-Related Unemployment Compensation

In or around July 2024, Respondent retained counsel to represent him in FINRA's investigation.[78] On August 9, 2024, Enforcement staff informed Respondent's counsel by email that FINRA's Rule 8210 request for a copy of Respondent's application for pandemic-related unemployment compensation was still outstanding.[79] Enforcement reminded counsel that Respondent was obligated to comply with FINRA's request.[80] That same day, Respondent's counsel responded by email, saying that Respondent had a copy of his application for pandemic-related unemployment compensation but, despite the two outstanding Rule 8210 requests dated November 28, 2023, and February 13, 2024, he would not produce it.[81] Respondent's counsel argued that FINRA had no authority to demand the production of Respondent's application for pandemic-related unemployment compensation.[82] Counsel declared that Respondent would not produce it "unless and until there is a final ruling that this position [that FINRA lacks authority to demand production of the document] is incorrect."[83]

Counsel's statement that Respondent possessed a copy of his application for unemployment compensation raised concerns for Enforcement staff about whether Respondent had provided false testimony to Enforcement during his OTR regarding his possession of his application.[84] If Respondent provided false testimony at his OTR, Enforcement staff considered such conduct to be in violation of FINRA Rules 8210 and 2010.[85]

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[77] JX-7, at 4 (pp. 64–65 of OTR transcript).

[78] Stip. ¶ 26.

[79] Stip. ¶ 27.

[80] *Id*.

[81] Stip. ¶ 28; JX-8.

[82] JX-8.

[83] JX-8.

[84] Enf. Sum. Disp. Br.; Edwards Decl. ¶ 16.

[85] Enf. Sum. Disp. Br.; Edwards Decl. ¶ 16.

F. Two Rule 8210 Requests Investigating Respondent's Potential False Testimony in His OTR

1. August 13, 2024, Rule 8210 Request

On August 13, 2024, FINRA sent Respondent another request for information and documents pursuant to FINRA Rule 8210.[86] This Rule 8210 request was in service of an expanded investigation into whether Respondent had testified falsely at his OTR about not having a copy of his application for pandemic-related unemployment compensation.[87] The August 13, 2024, Rule 8210 request sought, among other things, "a detailed, written statement regarding any documents" that Respondent had in his possession, custody, or control relating to the PUA benefits he received from the state of New Jersey in 2020 or 2021.[88] The Rule 8210 request specifically asked who provided the documents to Respondent, when he received them, and how he received them.[89] Respondent received the August 13, 2024, Rule 8210 request.[90]

Respondent's response to the August 13, 2024, Rule 8210 request was due on or before August 20, 2024.[91] On August 20, Respondent's counsel confirmed by email that Respondent would not produce the documents and information FINRA had requested.[92]

2. August 21, 2024, Rule 8210 Request

On August 21, 2024, FINRA sent Respondent, through counsel, a second Rule 8210 request for the documents and information previously requested on August 13.[93] Respondent received this Rule 8210 request.[94] On August 28, 2024, the deadline for complying with the second Rule 8210 request, Respondent's counsel again confirmed by email that Respondent would not produce the documents and information FINRA sought.[95]

G. FINRA's Jurisdiction

Initially, Respondent framed the issue in this case as one of jurisdiction. In his brief in support of summary disposition, Respondent asserted, "FINRA had no jurisdiction to inquire into

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[86] Stip. ¶ 29; JX-9.

[87] Enf. PH Br. 7.

[88] JX-9, at 2. Stipulation ¶ 29 appears to contain a typographical error substituting 2000 for 2020.

[89] Stip. ¶ 29; JX-9, at 2.

[90] Stip. ¶ 30.

[91] Stip. ¶ 29; JX-9, at 2.

[92] Stip. 32.

[93] Stip. ¶ 33.

[94] Stip. ¶ 34.

[95] Stip. ¶ 35.

state unemployment insurance matters . . . ."[96] He called his application for pandemic-related unemployment compensation a "personal matter,"[97] and declared that "FINRA has no business nosing around in matters involving [my] personal unemployment insurance benefits."[98] At the hearing, Respondent's counsel also repeated that the only issue in this case is "jurisdictional."[99]

Respondent's framing of the issue is incorrect. FINRA has jurisdiction over Respondent because he was registered during the time he is alleged to have engaged in misconduct, during the time he was under investigation, and at the time this proceeding commenced on September 25, 2025. Under Article V, Section 4(a) of FINRA's By-Laws, even though Respondent is no longer associated with a FINRA member firm, FINRA retains jurisdiction for two years after his registration was last terminated.[100]

The issue in this case is not FINRA's jurisdiction, but, rather, the scope and proper application of FINRA Rules 8210 and 2010. The question is whether in this case FINRA exceeded its authority under those rules.

H. FINRA Rules 8210 and 2010

1. FINRA Rule 8210

FINRA Rule 8210(a) authorizes FINRA staff to obtain information and documents for the "purpose of an investigation" (as well as a complaint, examination, or proceeding) under FINRA By-Laws or rules. Rule 8210(a) does not merely allow the staff to make inquiries. It specifies that FINRA staff "shall have the right" to "require" the production of information and documents. The Rule speaks in no uncertain terms about the staff's authority to demand the production of information and documents for an investigation pursuant to FINRA's By-Laws or rules.

In describing what may be required to be produced, Rule 8210(a) speaks broadly. The Rule states that FINRA staff can demand information and documents "with respect to any matter involved" in an investigation that is "authorized by the FINRA By-Laws or rules." As noted above, FINRA conducted both its investigations (one into Respondent's potential dishonesty with the New Jersey authorities about his securities business and compensation and the other into his

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[96] Resp't Sum. Disp. Br. 2.

[97] Resp't Sum. Disp. Br. 14.

[98] Resp't Opp'n Br. 13.

[99] Tr. (opening statement by Respondent's counsel) 30–32.

[100] *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *14 (Jan. 21, 2022) (citing, *inter alia*, FINRA By-Laws, Article V, Section 4(a) (providing that a "person whose association with a member has been terminated and is no longer associated with any member . . . shall continue to be subject to the filing of a complaint" for two years after the effective date of the termination of registration for a failure to provide information requested by FINRA during that two-year period)).

possible false OTR testimony) pursuant to FINRA Rule 2010, the ethical conduct rule.[101] As further discussed below, the matters under investigation were business-related and FINRA was authorized under FINRA Rule 2010 to conduct its inquiries.[102] In Rule 8210(a), the word "matter" is not limited to certain types of matters. The Rule permits inquiry with respect to "any" matter."[103] It requires only that a "matter" be "involved" with an investigation under FINRA's rules. Rule 8210 is written broadly because it would be impossible to anticipate and specifically label all the types of possible misconduct that could be subject to investigation or to itemize all the different kinds of information and documents that might be relevant to myriad investigations.

Rule 8210(a) specifies the parties subject to a FINRA demand for information and documents. A "member, person associated with a member, or any other person subject to FINRA's jurisdiction" must provide the information and documents requested pursuant to Rule 8210. The Rule is clear that any person who is subject to FINRA's jurisdiction—as Respondent here was and, despite the termination of his registration, still is—must comply with a Rule 8210 request.

Rule 8210(c) makes plain that the obligation to comply with a Rule 8210 request is mandatory. Rule 8210(c) instructs, "No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule." The Rule contains no exceptions, privileges, or exemptions from the obligation to comply with a Rule 8210 request, and precedents uniformly declare that the obligation to comply is "unequivocal."[104] Nor does the Rule contemplate any scrutiny of the investigation or the relevance of the requested documents and information to the investigation prior to producing the requested information and documents.[105] The Securities and Exchange Commission ("SEC") has repeatedly held that members and their associated persons may not set conditions on their

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[101] *See supra* Part II.C. and II.E.

[102] *See supra* Part II.C. and II.E.

[103] *See Dep't of Enforcement v. Ploshnick*, No. CAF980014, 1998 NASD Discip. LEXIS 67, at *8 (OHO Dec. 7, 1998) (observing that the language of NASD Procedural Rule 8210 (now FINRA Rule 8210) is "broad and sweeping" and "contains no conditions, exceptions, or qualifications which support limitations on the proper 'matter' for staff inquiry").

[104] *E.g.*, *Wilfredo Felix*, Exchange Act Release No. 101733, 2024 SEC LEXIS 3309, at *8 (Nov. 25, 2024) ("[A]s we have held, [FINRA Rule 8210] is 'unequivocal' in its requirement that no member or person shall fail to provide information or testimony in response to a FINRA request under Rule 8210."); *North Woodward Financial Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *25 (May 8, 2015) (stating that FINRA's rules are "unequivocal" with respect to the obligation to provide information requested by FINRA).

[105] *North Woodward Financial Corp.*, 2015 SEC LEXIS 1867, at *25–26 ("We repeatedly have held that members and their associated persons may not 'second guess' FINRA's requests for information"); *CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (stating that member firms and their associated persons cannot "take it upon themselves to determine whether information is material to an NASD [now FINRA] investigation of their conduct").

compliance with a Rule 8210 request.[106] "[F]ailing to provide full and prompt cooperation with a Rule 8210 request, or providing false or misleading information, violates Rule 8210."[107]

The importance of Rule 8210 to the fulfillment of FINRA's regulatory mission is well-recognized. Rule 8210 "is at the heart of the self-regulatory system for the securities industry."[108] Because FINRA has no subpoena power or other means to compel the production of information and documents when investigating possibly violative activities of member firms and their associated persons, Rule 8210 is the principal way FINRA learns about such activities.[109] Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."[110] The SEC has made the importance of Rule 8210 clear, saying,

> We have repeatedly stressed the importance of cooperation in NASD [now FINRA] investigations. We have also emphasized that the failure to provide information undermines the NASD's [now FINRA's] ability to carry out its self-regulatory functions. Since the NASD [now FINRA] lacks subpoena power, it must rely on [R]ule 8210 in connection with its obligation to police the activities of its members and associated persons. Failures to comply are serious violations because they subvert the NASD's [now FINRA's] ability to carry out its regulatory responsibilities.[111]

Given the importance of Rule 8210 to FINRA's investigations, member firms and their associated persons must cooperate fully in providing FINRA with information.[112] "Even if no separate disciplinary action results from NASD's [now FINRA's] underlying investigation, a failure to cooperate during that investigation threatens the self-regulatory system and, in turn,

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[106] *See*, *e.g.*, *CMG Inst'l Trading*, 2009 SEC LEXIS 215, at *26 (stating that "[w]e have held repeatedly that members and their associated persons may not . . . set conditions on their compliance [with Rule 8210]" (internal quotations omitted)).

[107] *Robbi J. Jones*, Exchange Act Release No. 104273, 2025 SEC LEXIS 3023, at *21 (Nov. 28, 2025).

[108] *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), *cert. denied*, No. 09-1054, 2010 U.S. LEXIS 3557 (Apr. 26, 2010).

[109] *Dep't of Enforcement v. Baron*, No. 2022073772701, 2025 FINRA Discip. LEXIS 2, at *60 & nn. 320–21 (OHO Jan. 15, 2025).

[110] *Id.* (quoting *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993)).

[111] *Dep't of Enforcement v. Ploshnick*, 1998 NASD Discip. LEXIS 67, at *8–9.

[112] *See CMG Inst'l Trading, LLC*, 2009 SEC LEXIS 215, at *21 (declaring that member firms and their associated persons have an obligation to respond to FINRA's request for information "fully and promptly"); *see also Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019) ("FINRA Rule 8210 requires associated persons to comply fully with FINRA's requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.").

investors by impeding NASD's [now FINRA's] detection of violative conduct."[113] A failure to comply with Rule 8210 requests "undermine[s] FINRA's ability to carry out its regulatory responsibilities and hinder[s] its ability to detect misconduct that threatens investors and markets."[114] It is therefore a violation of Rule 8210 for a person to fail to provide information or documents sought by FINRA pursuant to Rule 8210.[115]

2. FINRA Rule 2010

Rule 2010 states: "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Although FINRA Rule 2010 on its face appears to apply only to FINRA member firms, it is supplemented by FINRA Rule 0140(a). FINRA Rule 0140(a) provides, "The Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under the Rules." The ethical obligations of what is now FINRA Rule 2010 have long been understood to extend to associated persons,[116] and the SEC has consistently upheld findings that associated persons have violated FINRA Rule 2010 and its predecessor, NASD Conduct Rule 2110.[117]

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[113] *CMG Inst'l Trading*, 2009 SEC LEXIS 215, at *37.

[114] *Wilfredo Felix*, Exchange Act Release No. 100662, 2024 SEC LEXIS 1860, at *10 (Aug. 6, 2024), *petition for review denied*, 2025 U.S. App. LEXIS 24321 (D.C. Cir. Sept. 18, 2025).

[115] *See Bradley C. Reifler*, 2022 SEC LEXIS 167, at *13–17 (respondent's refusal to answer questions during OTR testimony violated Rule 8210); *Juan Escobio*, Exchange Act Release No. 97701, 2023 SEC LEXIS 1532, at *16–17 (June 12, 2023) (respondent's failure to provide testimony violated Rule 8210).

[116] *See, e.g.*, *Matthew R. Logan*, Exchange Act Release No. 99867, 2024 SEC LEXIS 753, *11 n.11 (Mar. 29, 2024) ("Although [FINRA Rule 2010] is directed at FINRA members, it also applies to associated persons." (citing FINRA Rule 0140(a))); *Gordon Kerr*, Exchange Act Release No. 43418, 2000 SEC LEXIS 2944, *2 n.1 (Oct. 5, 2000) (citing NASD Rule 0115, the predecessor to Rule 0140, to reach the same conclusion with respect to NASD 2110, the predecessor to FINRA Rule 2010); *Alderman v. SEC*, 104 F.3d 285, 287 (9th Cir. 1997) (citing a still earlier predecessor to FINRA Rule 2010, Article I, Section 5(a), which stated that associated persons "shall have the same duties and obligations as a member under these Rules of Fair Practice," in order to apply Article III, Section 1 to an associated person, which obligated "[a] member, in the conduct of his business, [to] observe high standards of commercial honor and just and equitable principles of trade").

[117] *See*, *e.g.*, *North Woodward Financial Corp*., 2015 SEC LEXIS 1867 (finding associated person, officer, and control person of member firm violated FINRA Rules 8210 and 2010); *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012) (finding individual registered representative violated NASD Conduct Rule 2110, the predecessor of FINRA Rule 2010).

FINRA Rule 2010 is a broadly written ethical conduct rule.[118] It is well-established that a violation of any FINRA rule, including Rule 8210, constitutes a violation of Rule 2010.[119] But Rule 2010 establishes a standard of conduct that "go[es] beyond legal requirements and depend[s] on general rules of fair dealing."[120] "[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements."[121] Rule 2010 "is used to protect market participants from dishonest and unfair practices."[122] "FINRA members and associated persons violate Rule 2010 if they act 'unethically or in bad faith.'"[123] Unethical conduct means conduct "not in conformity with moral norms or standards of professional conduct" and bad faith means "dishonesty of belief or purpose."[124] Whether misconduct is a standalone violation of Rule 2010 largely turns on whether it reflects negatively on the respondent's ability "to comply with the regulatory requirements of the securities business and to fulfill [the respondent's] fiduciary duties in handling other people's money."[125]

I. Respondent's Violations

There is no dispute about the facts in this case. FINRA staff became concerned that Respondent may have misrepresented his securities business and compensation to the New Jersey authorities for the purpose of obtaining money that he might not otherwise have been entitled to receive.[126] FINRA staff considered such conduct, if it occurred, to be dishonest and

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[118] *See, e.g.*, *Dep't of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *6–7 (FINRA Bd. of Governors May 9, 2014) (stating that FINRA Rule 2010 "reaches beyond ordinary legal requirements," and that analysis under Rule 2010 in a FINRA disciplinary proceeding "is a flexible evaluation of the surrounding circumstances with attention to the ethical nature of the conduct"), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015).

[119] *See, e.g.*, *Wilfredo Felix*, 2024 SEC LEXIS 3309, at *8 (stating that by violating Rule 8210 respondent also violated FINRA Rule 2010); *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *19 n.29 (July 2, 2013) (declaring that the violation of another SEC or FINRA rule constitutes a violation of NASD Rule 2110, the predecessor of FINRA Rule 2010), *petition for review denied*, 751 F.3d 472 (7th Cir. 2014).

[120] *Dep't of Market Regulation v. Leighton*, No. CLG050021, 2010 FINRA Discip. LEXIS 3, at *158 (NAC Mar. 3, 2010) (quoting *Dep't of Enforcement v. Shvarts*, No CAF980029, 2000 NASD Discip. LEXIS 6, at *12 (NAC June 2, 2000)); *see also Dep't of Enforcement v. Maheshwari*, No. 2017055608101, 2020 FINRA Discip. LEXIS 46, at *15 (NAC Dec. 17, 2020) (stating that Rule 2010 is not limited to illegal conduct).

[121] *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *12 n.20 (Feb. 13, 2015).

[122] *Lek Sec. Corp*., Exchange Act Release No. 102533, 2025 SEC LEXIS 645, at *57 (Mar. 6, 2025).

[123] *Trevor Michael Saliba*, Exchange Act Release No. 99940, 2024 SEC LEXIS 852, at *15 (Apr. 11, 2024) (quoting *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020)).

[124] *Id*.

[125] *Dep't of Enforcement v. Iannazzo*, No. 2020067734001, 2025 FINRA Discip. LEXIS 1, at *68 (OHO Feb. 6, 2025) (quoting *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016)), *appeal docketed* (NAC Mar. 3, 2025).

[126] *See supra* Part II.C.1 to 2.

unethical in violation of FINRA Rule 2010.[127] FINRA sent Respondent two FINRA Rule 8210 requests (in November 2023 and February 2024) seeking his application and any other documents he submitted to NJDUI to obtain pandemic-related unemployment compensation. He failed to provide the documents.[128] That failure violated FINRA Rule 8210 and, by virtue of the Rule 8210 violation, also violated FINRA Rule 2010.

Separately, after Respondent's OTR, FINRA staff became concerned that Respondent may have testified at his OTR untruthfully.[129] Knowingly providing false information to FINRA, if Respondent did that, would be dishonest and unethical conduct in violation of Rules 8210 and 2010.[130] FINRA investigated by sending Respondent two FINRA Rule 8210 requests again seeking a copy of his PUA benefits application, but also seeking information about when and how he came into possession of it and all other documents in his possession related to his receipt of pandemic-related unemployment compensation. He refused to provide the information and documents.[131] That misconduct also violated FINRA Rule 8210 and, because he violated Rule 8210, he also violated FINRA Rule 2010.

J. Respondent's Flawed Arguments Against Finding a Violation

Respondent makes various arguments in his defense. All the arguments depend on a single, flawed premise. That premise is that he did not have to comply with the FINRA Rule 8210 requests at issue because FINRA exceeded its authority in various ways. As discussed below, we reject the premise that Respondent could refuse to comply with Rule 8210 unless and until FINRA's authority for its investigation is finally determined. And we also reject Respondent's assertion that FINRA exceeded its authority in this case.

1. Respondent Cannot Condition His Response to FINRA Rule 8210 Requests on the Validity of the Underlying Investigation

This case is about Respondent's failure to comply with FINRA Rule 8210 requests made pursuant to FINRA Rule 2010. We look to Rule 8210 to determine Respondent's obligations and whether he fulfilled them.

Respondent puts the cart before the horse. He asserts that we must examine the underlying Rule 2010 investigation before determining whether he violated FINRA Rule 8210.

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[127] *See supra* Part II.C.

[128] *See supra* Part II.C.1 to 2.

[129] *See supra* Part II.D. to E.

[130] *Saliba*, 2024 SEC LEXIS 852, at *15; *cf. Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) (observing that "any reasonable person would know that . . . intentional deception of [FINRA] [by providing false information to it] would violate" Rule 2010); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23-24 (Aug. 22, 2008) (stating that providing false information to NASD (now FINRA) is an independent violation of the predecessor of FINRA Rule 2010).

[131] *See supra* Part II.F.1 to 2.

He reasons that if the underlying investigation was "improper," then so was the use of Rule 8210 to pursue it.[132] Respondent has cited no case, however, in which a respondent was excused from complying with a Rule 8210 request on the basis that the underlying investigation was improper.

As discussed above, compliance with a Rule 8210 request is mandatory, and a respondent cannot condition compliance with a Rule 8210 request on a determination that FINRA's exercise of its investigatory authority is proper.[133] Because FINRA has no subpoena power, Rule 8210 must operate in this way. Otherwise, any FINRA effort to investigate potential misconduct could be thwarted and indefinitely delayed by any respondent who decides to challenge the validity of the underlying investigation. FINRA would be unable to fulfill its regulatory mission.[134]

Moreover, Respondent has agreed to comply with the mandatory duty under FINRA Rule 8210 to provide documents, information, and testimony when asked to do so pursuant to that Rule. Article V, Sec. 2(a)(1) of FINRA's By-Laws requires every applicant for registration as an associated person to sign an agreement to comply with FINRA's rules. The Form U4 that a person must file to become registered contains such an agreement for the applicant's signature.[135] Respondent is thus bound by contract to comply with Rule 8210 requests without imposing conditions on his compliance.

An investigation is just that, an investigation. It may or may not lead to disciplinary action. If FINRA takes disciplinary action that a respondent believes is beyond the legitimate scope of its authority, the respondent can raise that defense at the hearing. But it cannot be asserted as a basis for refusing to comply with a Rule 8210 request. For example, "Respondents may raise a defense based on the timing of their registration termination during a hearing. They may not, however, refuse to provide information based on this theory when they are asked for information under FINRA Rule 8210."[136] A respondent must first provide information pursuant to Rule 8210, because "Enforcement often commences an investigation in advance of having a

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[132] Resp't Sum. Disp. 5–6.

[133] *See supra* Part H.1.

[134] *See supra* Part H.1; *see also Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *22 (NAC June 3, 2014) (declaring that delay in responding to a Rule 810 request undermines FINRA's ability to conduct investigations and protect the public interest).

[135] See https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms/form-u4 where a PDF of the Form U4 can be found. Every applicant for registration must sign the Form U4 at the end of Section 15A Individual/Applicant's Acknowledgement and Consent. Section 15A contains, among other things, a commitment to comply with all the applicable laws, rules and regulations of the jurisdictions and self-regulatory organizations with which the applicant seeks to register "as they are or may be adopted." The agreement encompasses FINRA Rule 8210 and contains no exceptions to full and complete compliance.

[136] *Dep't of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *16 (NAC Sept. 30, 2019).

clear picture of the nature and breadth of potential misconduct."[137] "Associated persons of a member firm are not allowed to thwart FINRA's investigation based on their self-serving claims that the requests are irrelevant or unrelated to their broker-dealer's activities."[138]

2. FINRA's Investigations Were Well Within the Scope of Its Authority

Even if Respondent could challenge the validity of a FINRA investigation before complying with a FINRA Rule 8210 request—which he certainly cannot—that challenge would fail. In this case, FINRA acted well within the scope of its authority under its By-Laws and Rules.

a. FINRA Rule 2010 Applies to Associated Persons

Enforcement sent Respondent the first and second Rule 8210 requests at issue here in connection with an investigation into what he told the New Jersey authorities about his securities business and compensation. That investigation was pursuant to the ethical conduct rule, FINRA Rule 2010. Enforcement sent Respondent the third and fourth Rule 8210 Requests in connection with an investigation into whether he gave false testimony at his OTR. That separate investigation also was pursuant to Rule 2010.

Respondent argues that he did not have to comply with any of these Rule 8210 requests because, according to Respondent, FINRA Rule 2010 only applies to FINRA member firms and not to associated persons like himself.[139] He asserts that FINRA cannot investigate him pursuant to Rule 2010, and reasons that, if FINRA cannot investigate him, it cannot compel him to comply with a Rule 8210 request.[140] We reject Respondent's assertion that FINRA Rule 2010 applies only to member firms.

Respondent admits that he has found no case challenging the application of FINRA Rule 2010 to an associated person.[141] He is, however, undaunted by what he describes as "long historical usage."[142] Respondent notes that Rule 2010 by its terms applies only to member firms and argues that Rule 0140 cannot be interpreted to extend the ethical conduct rule to associated

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[137] *Id.* (quoting *Dep't of Enforcement v. N Woodward Financial Corp.*, 2014 FINRA Discip. LEXIS 32, at *47 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015)), *petition for review denied sub nom. Troszak v. SEC,* No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

[138] *Id*. *See also Evansen*, 2014 FINRA Discip. LEXIS 10, at *29 (stating that FINRA has no obligation to justify a Rule 8210 request or explain the relevance of requested information).

[139] Resp't Sum. Disp. Br. 7-10.

[140] *See supra* Part II.J.1.

[141] Resp't Sum. Disp. Br. 8 ("[W]e acknowledge that FINRA Rule 2010, as well as its predecessor NASD Rule 2110, has long been applied to associated persons like Pavelko who are not themselves members of FINRA.").

[142] Resp't Sum. Disp. Br. 8.

persons as well as member firms.[143] He asserts that Rule 0140 appears "to eliminate all distinctions between members and associated persons for all FINRA rules" [144] when, in fact, it is "impossible" for members and their associated persons to have the same substantive duties and obligations under all the rules.[145] He then points out that many FINRA Rules can only be understood to apply to a member firm, giving as one example the net capital rule.[146] Similarly, he asserts that other FINRA Rules can only apply to associated persons, giving as one example a rule that exempts certain associated persons from registration requirements.[147] On that basis, Respondent urges that Rule 0140 be ignored and the application of Rule 2010 be limited to the entity specified in Rule 2010, a "member" firm.

Respondent has created a problem where there is none. While it seems obvious that some FINRA Rules, such as the net capital rule, can only apply to member firms, Respondent has offered no evidence that Rule 0140 has ever been used in a way that misapplies a rule for member firms to an individual associated person, or, vice versa, that misapplies a rule that applies to an individual associated person to a member firm.

Furthermore, the ethical conduct rule is not a rule that obviously applies only to a member firm or only to an associated person, such as the net capital rule or the registration requirements for associated persons. For the protection of public investors and other market participants, and to promote confidence in the integrity of the markets, high standards of ethical conduct can, and should, apply to both FINRA member firms and their associated persons. No problem or confusion is created by holding that both member firms and their associated persons have a duty to observe high ethical standards.

In fact, to divorce Rule 0140 from Rule 2010—thereby limiting the application of Rule 2010 to member firms—would be contrary to the original purpose of Rule 0140 and its predecessors. When FINRA's predecessor, the NASD, first registered as a national securities association in 1939, its conduct rules, the Rules of Fair Practice, applied only to member firms.[148] For that reason, the predecessor to Rule 2010 applied only to members.[149] After having some experience in bringing disciplinary actions, the NASD determined that the focus on the conduct of member firms was inadequate for purposes of protecting investors and the public. The

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[143] Resp't Sum. Disp. Br. 7-10.

[144] Resp't Sum. Disp. Br. 8.

[145] Resp't Sum. Disp. Br. 8.

[146] Resp't Sum. Disp. Br. 9.

[147] Resp't Sum. Disp. Br. 9.

[148] *See generally Nat'l Ass'n of Sec. Dealers, Inc.*, Exchange Act Release No. 2211, 1939 SEC LEXIS 659 (Aug. 7, 1939).

[149] *See, e.g.*, Exchange Act Release No. 3035, 1941 SEC LEXIS 112, *1 (Oct. 8, 1941) (relating to the SEC's review of the NASD's disciplinary actions under the rule, without identifying the specific NASD members subject to the SEC's review).

relevant misconduct was "performed independently by employees of members, themselves not directly subject to NASD jurisdiction or directly obligated to NASD to obey the code of fair practice."[150] To remedy this problem, the NASD in 1945 introduced the concept of "registered representatives" and adopted a rule that "[r]egistered representatives of members shall be under the same duties and obligations as a member under the Rules of Fair Practice."[151] This was the predecessor to Rule 0140. It was a simple solution to the problem of the NASD's lack of disciplinary authority over misconduct by individuals in the securities industry that did not require rewriting numerous individual rules.

In sum, Respondent's assertion that FINRA Rule 2010 does not apply to him as an individual associated person is unfounded. FINRA has authority to investigate him for a potential violation of that ethical conduct rule.

b. FINRA Had Authority Under FINRA Rule 2010 to Investigate Respondent's Possible Dishonesty About His Securities Business and Income

Respondent asserts that his application for pandemic-related unemployment compensation is a "purely personal" matter[152] that has "no nexus to any securities business."[153] According to Respondent, without a "nexus" to the securities business FINRA has no authority to investigate.[154] Respondent does not define the term "nexus," but he asserts there was a "nexus" in all the cases where a respondent has been disciplined for violating FINRA Rule 2010 or a predecessor of that Rule.[155] He asserts there is no such "nexus" in this case.[156] Respondent maintains that the conduct under investigation was not commercial, not related to the business or trading activities of a broker-dealer, and not related to the industry FINRA is authorized to regulate.[157] He emphasizes that FINRA's investigation of his application for PUA benefits was

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[150] *Nat'l Ass'n of Sec. Dealers, Inc.*, Exchange Act Release No. 3734, 1945 SEC LEXIS 325, *4 (Sep. 13, 1945); *see also Nat'l Ass'n of Sec. Dealers, Inc.*, at *5 ("The NASD has concluded that it cannot fulfill its purposes completely unless employees of members who deal with customers or who are otherwise in a position to do harm to investors or other dealers are directly charged with responsibility under the code of fair practice and are individually answerable for violations of the code.").

[151] *Nat'l Ass'n of Sec. Dealers*, 1945 SEC LEXIS 325, *27-32, 36.

[152] Resp't Opp'n Br. 8.

[153] Resp't Sum. Disp. Br. 2-3, 14.

[154] Resp't Sum. Disp. Br. 3.

[155] Resp't Opp'n Br. 2-8.

[156] Resp't Opp'n Br. 8.

[157] Resp't Sum. Disp. Br. 10-13 (Rule 2010 is "qualified" by concepts of commercial honor, trade, and business), 14 (Respondent's PUA benefits application "was not in the conduct of a business and entailed no commercial or trade matters. . . . It had no bearing on any matter regulated under the Exchange Act or by FINRA."); Resp't Opp'n Br. 2 ("This case must be dismissed because [Respondent's PUA benefits application] has nothing to do with FINRA's regulatory mandate to regulate the commercial, business or trading activities of securities broker-dealers."), 12-13

"*only*" about his PUA benefits application.[158] He therefore concludes that FINRA lacked authority to investigate what Respondent said in his PUA benefits application.[159]

Respondent's characterization of FINRA's investigation is far too narrow. Although the investigation focused on obtaining Respondent's PUA benefits application and any other submissions Respondent may have made in certifying his eligibility for pandemic-related unemployment compensation, the investigation was for the purpose of determining whether Respondent had been dishonest about his securities business and income. Thus, contrary to Respondent's characterization, the potential misconduct related to Respondent's securities business. The investigation also had to do with Respondent's possible dishonesty in dealing with the New Jersey authorities administering the PUA benefits program. In that context, Respondent had a duty to tell the truth, just as Respondent has a duty to tell the truth to FINRA. That means that the possible misconduct bears on Respondent's ability to comply with regulatory requirements and inquiries. Furthermore, the potential misconduct under investigation had to do with the possibility of wrongfully obtaining money, a matter of legitimate concern for FINRA. Such misconduct, if it occurred, would reflect negatively on Respondent's ability to deal honestly with his customers, his broker-dealer firm, other market participants, and regulators, including FINRA.

Broken into separate elements, the investigation sought information about whether Respondent had been:

- dishonest,
- with authorities to whom he owed a duty to tell the truth,
- about his securities business and compensation, and
- for the purpose of obtaining money which he otherwise may not have been entitled to receive.

The focus of the investigation was on Respondent's possible dishonesty, because "opportunities for dishonesty recur constantly in the securities industry."[160]

("FINRA can only investigate a potential Rule 2010 violation that involves 'commercial' conduct in a securities 'business' or 'trade,' the business and trade of those securities broker-dealers that it is charged with regulating.").

[158] Resp't Sum. Disp. Br. 2; Resp. PH Br. 2-3.

[159] Resp't Opp'n Br. 9-10.

[160] *Gary M. Kornman*, Initial Decisions Release No. 335, 2007 SEC LEXIS 2375, at *18 (Oct. 9, 2007); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *27 (Feb. 13, 2009) ("The securities industry presents continual opportunities for dishonesty and abuse and depends heavily on the integrity of its participants and on investors' confidence."), *petition for review denied*, 592 F.3d 173 (D.C. Cir. 2010) (affirming bar for making intentional false statement to SEC staff for purpose of misleading investigators).

Respondent mischaracterizes FINRA's investigation in yet another way. He asserts that the investigation "would necessarily intrude on New Jersey's own regulatory framework" and would require FINRA to interpret and apply New Jersey law that is outside FINRA's sphere of authority and competence.[161] That is not correct. Any determination by FINRA that Respondent had been dishonest with the New Jersey authorities about his securities business and income would not interfere with New Jersey's administration of PUA benefits. Nor would it turn on interpretation of New Jersey law. Respondent's honesty about his securities business and income is a separate issue from whether he was entitled to PUA benefits. His honesty is an appropriate subject for FINRA's investigation, and FINRA can pursue disciplinary sanctions if he was dishonest in violation of FINRA Rule 2010 without interfering with the administration of PUA benefits.[162]

Besides mischaracterizing the investigation, Respondent misunderstands the scope of FINRA Rule 2010. As discussed above, FINRA Rule 2010 is broadly written to give FINRA flexibility to investigate and take disciplinary action against all kinds of unethical and dishonest conduct, not just in trading securities or dealing with securities customers.[163] Rule 2010 applies when the misconduct "reflects on the associated person's capacity to comply with the regulatory requirements of the securities business and to fulfill [his] fiduciary duties in handling other people's money."[164] "Whether misconduct is within Rule 2010's scope is ultimately a question of whether the conduct raises concerns that the associated person will not comply with the regulatory requirements of the securities business and will not fulfill his or her fiduciary duties in handling other people's money."[165] That is precisely the concern that prompted FINRA to investigate what Respondent said in his PUA benefits application about his securities business and income.[166]

Respondent calls that concern "absurd."[167] He asserts, "One could just as well say, 'A person who misrepresents his golf score to his friends may also misrepresent the merits of an

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[161] Resp't Sum. Disp. Br. 14.

[162] *C.f. Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *12–14 (Dec. 4, 2015) (stating that FINRA disciplinary action for conversion of insurance premiums did not intrude into separate realms of insurance or state law regarding independent contractors and contracts because FINRA's focus was on violation of FINRA's ethical conduct rule). The SEC said at *14, "[I]t is Wiley's violation of FINRA Rule 2010, not his violation of any contract, that is at issue here."

[163] *See supra* Part II.H.2.

[164] *Dep't of Enforcement v. Iannazzo*, 2025 FINRA Discip. LEXIS 1, at *68 n.386 (citing *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016)).

[165] *Dep't of Enforcement v. Mantei*, No. 2015045257501, 2021 FINRA Discip. LEXIS 4, at *49 (OHO Feb. 18, 2021) (internal quotes and citation omitted), *sanctions modified*, 2023 FINRA Discip. LEXIS 10 (NAC May 30, 2023), *appeal docketed*, No. 3.21516 (SEC June 27, 2023).

[166] Enf. Sum. Disp. Br. 19.

[167] Resp't Opp'n Br. 12.

investment to his customers.'"[168] In spinning out hypothetical misapplications of Rule 2010, Respondent paints a picture of FINRA potentially running amok if not restrained.[169] That picture does not reflect reality.

FINRA Rule 2010 requires a FINRA member (and by virtue of FINRA Rule 0140, an associated person) to observe high ethical standards, but the Rule limits its application to high ethical standards "in the conduct of its business." Under this limitation, lying about a golf score is unlikely to be pursued as a Rule 2010 violation.

The reference in Rule 2010 to business conduct has been interpreted as applying Rule 2010 to any "business-related conduct." Importantly, business-related conduct is not limited to conduct that involves securities or customers.[170] The SEC has explained why this is so. "Misconduct that does not involve securities or customers may indicate that the associated person is unfit and that the person may engage in misconduct involving securities or customers in the future."[171]

Respondent takes the position that his potential misconduct is not business-related. He characterizes his PUA benefits application as "personal"[172] as though "personal" activities could never be business-related. Rule 2010 has been applied, however, to various unethical and dishonest practices that were personal in nature. For example, associated persons have been disciplined under Rule 2010 for the way they made deposits in their personal bank accounts, because they engaged in what is known as "structuring" to avoid currency reporting requirements, which is an unlawful activity.[173] Similarly, an associated person has been disciplined under Rule 2010 for making false claims of fraudulent transactions in his personal banking account and then converting reimbursements he received from his bank.[174] Associated

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[168] Resp't Opp'n Br. 12.

[169] Resp't Opp'n Br. 12 (hypothetical misapplication of FINRA Rule 2010 to running a stop sign, taking more tax deductions than appropriate, lying to a spouse).

[170] *Stephen Grivas*, 2016 SEC LEXIS 1173, at *16–21 (holding that conduct at issue need not relate to customers or to a securities transaction to be covered by Rule 2010).

[171] *Michael Joseph Clarke*, Exchange Act Release No. 97860, 2023 SEC LEXIS 1756, at *22 (July 10, 2023) (Rule 2010 "applies to associated persons of FINRA member firms, and to all business-related conduct, regardless of whether it involves securities or customers.").

[172] Resp't Sum. Disp. Br. 14 (Respondent's PUA benefits application was a "personal matter"); Resp't Opp'n Br. 2, 13 ("FINRA has no business nosing around in matters involving Pavelko's personal unemployment insurance benefits."), 14-15 (FINRA's investigation was improper because Respondent's PUA benefits application was "purely personal").

[173] *Iannazzo*, 2025 FINRA Discip. LEXIS 1 (rejecting argument that personal nature of respondent's banking activity to fund house renovation was not business-related); *Dep't of Enforcement v. White*, No. 2015045254501, 2019 FINRA Discip. LEXIS 30, at*42 (NAC July 26, 2019) (rejecting argument that the way the respondent deposited his gambling winnings in his personal bank and credit union accounts was not business-related).

[174] *Vedovino*, 2019 FINRA Discip. LEXIS 20, at *15–20 (rejecting argument that respondent's use of his personal checking and credit card accounts to convert funds from his bank was not business-related).

persons have also been disciplined under Rule 2010 for forging signatures on insurance applications[175] and converting insurance premiums intended to be paid to an insurance company.[176] Associated persons have been disciplined under Rule 2010 for borrowing funds from colleagues and then not paying back the funds,[177] for misusing a co-worker's credit card,[178] and for issuing a check knowing that funds were insufficient to cover the check.[179]

Respondent argues that these and other cases applying FINRA Rule 2010 are different from the case at hand. He asserts that "the connection between FINRA's . . . investigation and the business of a broker-dealer [in all the other Rule 2010 cases] was clear."[180] In contrast, Respondent maintains, his PUA benefits application has "nothing to do with the business of a broker-dealer."[181] He asserts that Respondent's "application to the state of New Jersey for unemployment benefits has nothing to do with FINRA's regulatory mandate to regulate the commercial, business or trading activities of securities broker-dealers."[182]

Respondent is in error. FINRA was concerned that Respondent had lied about his securities business and income. Thus, his securities business was the very subject of the potential misconduct. The investigation was clearly business-related.

Moreover, the type of misconduct under investigation here, like the misconduct in the cases discussed above, was business-related. Structuring, forging insurance forms, converting funds, misusing another's credit card, and bouncing checks are all forms of dishonest conduct in dealing with money. Dishonest conduct in dealing with money is business-related because the securities business involves being entrusted with money. The potential misconduct under investigation here also involved dishonesty in dealing with money. Investigating a registered

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[175] *Thomas E. Jackson*, Exchange Act Release No. 11476, 1975 SEC LEXIS 1404, at *4 (June 16, 1975) ("Although [respondent's] wrongdoing in this instance did not involve securities, the NASD [now FINRA] could justifiably conclude that on another occasion it might.").

[176] *Wiley v. SEC*, 663 Fed. App'x 353, 360-61 (5th Cir. Oct. 19, 2016) (holding conversion of insurance premiums to be a violation of FINRA Rule 2010); *Ernest A. Cipriani*, Exchange Act Release No. 33675, 1994 SEC LEXIS 506 (Feb. 24, 1994) (finding violation of predecessor to FINRA Rule 2010 where respondent converted funds remitted to him by non-securities customers for the purchase of insurance).

[177] *Michael Joseph Clarke*, 2023 SEC LEXIS 1756, at *17–21 (holding respondent violated Rule 2010 when he borrowed money from coworkers based on misrepresentations that the money would be used in his ticket-brokering business and then converted the money for other purposes).

[178] *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (upholding bar of registered representative who misused co-worker's credit card).

[179] *Michael Joseph Clarke*, 2023 SEC LEXIS 1756, at *25–26 (holding that respondent violated Rule 2010 by issuing a check when he knew or should have known that account lacked sufficient funds to cover the check).

[180] Resp't Opp'n Br. 2.

[181] Resp't Opp'n Br. 8.

[182] Resp't Opp'n Br. 2.

representative for potential dishonesty in dealing with money is well within the scope of FINRA's mandate.

Respondent argues, however, that in all the other Rule 2010 cases a "nexus" existed between the misconduct and the business of a broker-dealer that does not exist here.[183] In the structuring cases the "nexus" was that structuring transactions occurred at an affiliate bank of the respondent's broker-dealer and the broker-dealer had trained employees not to engage in structuring.[184] Similarly, where the respondent made false claims that fraudulent banking transactions had occurred in his personal bank account, the bank was an affiliate of the broker-dealer.[185] Forged signatures on insurance applications and the conversion of insurance premiums occurred in the context of insurance business, but the insurance companies were affiliates of broker-dealers.[186] Borrowing and then converting funds from co-workers, misusing a co-worker's credit card, and bouncing a check involved people who all worked at broker-dealer firms.[187]

Respondent treats the connection between the misconduct and the broker-dealer firms in these cases as the determinative factor in applying FINRA Rule 2010. To apply Rule 2010, however, "[t]he relationship between an associated person's unethical actions and the conduct of his securities business need not be close."[188] It is equally important that the misconduct and surrounding circumstances cast doubt on the respondent's fitness to be in the industry and support the application of the ethical conduct rule. For example, in one of the structuring cases some of the structuring transactions occurred at a bank affiliated with the broker-dealer, but others occurred at an unaffiliated credit union.[189] Whether structuring occurs at an affiliated bank or another financial institution, the misconduct still gives rise to the same concern about a respondent's fitness to be in the industry. And, similarly, conversion of insurance premiums from an affiliated insurance company is no worse than conversion from a non-affiliate would be. The significance of misconduct occurring at an affiliated entity is that a broker-dealer is more likely to learn of misconduct at an affiliate than to learn of misconduct at an unrelated entity.

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[183] Resp't Opp'n Br. 2-8.

[184] *Iannazzo*, 2025 FINRA Discip. LEXIS 1, at *70–71 (structuring transactions occurred in accounts at his firm and an affiliate bank); *White*, 2019 FINRA Discip. LEXIS 30, at *15–20, *42–44 (some, but not all, structuring transactions occurred in accounts at an affiliated bank and firm had trained respondent to avoid structuring).

[185] *Vedovino*, 2019 FINRA Discip. LEXIS 20, at *14–16 (finding respondent's conversion of funds from bank affiliate of brokerage firm was violation of FINRA Rule 2010 regardless of whether it related to securities or customers).

[186] *Wiley*, 663 Fed. App'x 353, at *358–59 (rejecting argument that FINRA had no jurisdiction to discipline respondent for conversion of insurance premiums).

[187] *Michael Joseph Clarke*, 2023 SEC LEXIS 1756, at *17–21, *25 (converting funds from co-workers and bouncing check); *Daniel D. Manoff*, 2002 SEC LEXIS 2684 (misusing co-worker's credit card).

[188] *Vedovino*, No. 2015048362402, 2018 FINRA Discip. LEXIS 20, at *18 (OHO July 5, 2018), *aff'd* 2019 FINRA Discip. LEXIS 20 (NAC May 15, 2019).

[189] *White*, 2019 FINRA Discip. LEXIS 30, at *15–20, *42–44.

Borrowing from co-workers and converting the money, misusing a co-worker's credit card, and bouncing a check would have been unethical and dishonest even if the victims had worked somewhere different from the brokerage firm where the respondent worked. The fact that the people involved all happened to work at a broker-dealer firm was not the most significant fact. It was the nature of the misconduct and surrounding circumstances that justified the application of the ethical conduct rule.

Respondent additionally argues that his potential misconduct is beyond the reach of FINRA Rule 2010 because he was not engaged in a commercial or profit-making activity when he applied for pandemic-related unemployment compensation.[190] He is incorrect. As long as the conduct is business-related, FINRA Rule 2010 applies to unethical and dishonest conduct even if it does not occur in a commercial or profit-making context. What matters is whether the misconduct reflects negatively on a respondent's ability to fulfill the high ethical standards required to participate in the securities industry. See, for example, *Henry E. Vail*, where an associated person violated just and equitable principles of trade by misappropriating funds from a political club for which he served as treasurer. [191] The misconduct—the misappropriation of the club's funds—had nothing to do with a commercial or profit-making business. But it did reveal the respondent's grave misunderstanding of his fiduciary duties as treasurer, and that was deemed business-related misconduct that cast doubt on his ability to honor his fiduciary responsibilities in his securities business.[192]

In sum, the investigation into whether Respondent lied to the New Jersey authorities about his securities business and income for the purpose of obtaining money that he may not have been entitled to receive was well within FINRA's authority under Rule 2010. As the SEC has said, "The securities industry presents a great many opportunities for abuse and

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[190] Resp't Opp'n Br. 1, 12-13.

[191] *Henry E. Vail*, Exchange Act Release No. 35872, 1995 SEC LEXIS 1514, at *9 (June 20, 1995) (respondent breached fiduciary duties to safeguard the club's funds), *aff'd*, *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (respondent's position as a fiduciary managing the club's funds constituted business-related conduct).

[192] Respondent claims that in *Vail* the misconduct was securities-related because, after Vail's misappropriation of club funds was discovered, he falsely told the club's new treasurer that the funds were in an account at his brokerage firm. Resp't Opp'n Br. 14; *see Vail*, 101 F.3d at 39 ("Because Vail made misrepresentations regarding the existence of an account at [his brokerage firm], we find that Vail's misconduct was securities related . . . ."). In the case at hand, if Respondent made false statements to the New Jersey authorities about his securities business and income, that would present a similar connection to his securities business. As in *Vail*, Respondent's misconduct would involve a misrepresentation about his securities business.

Notably, the SEC said it was not necessary to find that Vail lied about the brokerage account to sustain the finding of a violation. It was enough that Vail had breached his fiduciary duties as club treasurer. *Vail*, 1995 SEC LEXIS 1514, at *8. In other words, the nature and circumstances of the misconduct were enough to bring it within the ambit of the ethical conduct rule.

overreaching, and depends very heavily on the integrity of its participants."[193] Honesty for a securities professional is "paramount."[194]

c. FINRA Had Authority Under FINRA Rule 2010 to Investigate Respondent's Possible False OTR Testimony

The two August 2024 Rule 8210 requests focused on different potential misconduct. Those requests concerned whether Respondent had lied to FINRA in his OTR testimony when he testified that he did not have a copy of his application for PUA benefits. The August 2024 Rule 8210 requests renewed the demand for a copy of the application and asked in addition for information about who provided it and when and how he received it.[195] As he was reminded at his OTR, Respondent had a duty to tell the truth at his OTR.[196]

Respondent argues that it makes no difference whether he lied in his OTR about not having a copy of his PUA benefits application, because the underlying inquiry into what he said in his application was not a valid exercise of FINRA's authority.[197] Respondent asserts that he "could not be found to have violated Rule 2010 by virtue of any statement, act or omission involving only his application for and receipt of unemployment benefits. . . . It was improper for [Enforcement] to ask him any questions about it at all."[198]

The short answer to this argument is that there is no privilege ever to give false testimony.[199] Respondent has cited no authority for the assertion that it did not matter if he lied at his OTR. Nor could he, because such a doctrine would eviscerate FINRA's ability to fulfill its regulatory mission. "Providing information to investigators is important to the effectiveness of the regulatory system, and the information provided must be truthful."[200] Any falsehood about matters under investigation prevent the investigation from performing its proper function. "[T]he very purpose of an investigation [is to] uncover the truth."[201] Providing FINRA with false information is inconsistent with high standards of commercial honor and just and equitable

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[193] *Gary M. Kornman*, 2009 SEC LEXIS 367, at *23 (quoting *Bruce Paul*, Exchange Act Release No. 21789, 1985 SEC LEXIS 2094, at *6 (Feb. 26, 1985)).

[194] *Id*.

[195] JX-9, at 2; JX-12, at 2, 4.

[196] Stip. ¶ 24.

[197] Resp't PH Br. 1 & n.1 (asserting that it did not matter when Respondent received his application for PUA benefits, since the investigation into his receipt of those benefits was improper).

[198] Resp't PH Br. 3.

[199] *Cf. Brogan v. United States*, 522 U.S. 398, 404 (1998) ("[N]either the text nor the spirit of the Fifth Amendment confers a privilege to lie. Proper invocation of the Fifth Amendment privilege against compulsory self-Incrimination allows a witness to remain silent, but not to swear falsely." (internal quotation marks omitted)).

[200] *Kornman*, 2009 SEC LEXIS 367, at *23.

[201] *Brogan*, 522 U.S. 398, at 402.

principles of trade.[202] Such misconduct constitutes a serious and independent violation of FINRA Rule 2010.[203]

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Disciplining Respondent for his failure to comply with the four Rule 8210 requests is necessary. He has demonstrated that he is unwilling to fulfill his clear duty to cooperate with FINRA in its investigation. Investigating Respondent pursuant to Rule 2010 for potential dishonesty in his PUA benefits application about his securities business and income furthered the purposes of the Exchange Act. If he engaged in such dishonesty, it would be important to protect investors and other market participants from the risk that he would deal dishonestly with them. Investigating Respondent for potential false testimony at his OTR is perhaps even more important. As the SEC has said, "We have consistently held that deliberate deception of regulatory authorities justifies the severest of sanctions."[204] The purpose of all disciplinary proceedings under the Exchange Act, whether taken by the SEC or FINRA, is remedial because such actions are designed "to protect the public interest against further risk of harm."[205]

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") are used as guidance by adjudicators in FINRA disciplinary cases in determining appropriate remedial sanctions. The Guidelines do not prescribe fixed sanctions for specific violations but, rather, provide direction to promote consistency and fairness. The Guidelines recommend ranges of sanctions for specific violations and suggest factors that adjudicators may consider in determining sanctions.[206]

If an individual does not respond in any manner to a FINRA Rule 8210 request, the Guidelines provide that a bar in all capacities is standard.[207] Here, Respondent partially complied with the first two Rule 8210 requests by testifying at his OTR about his PUA benefits application. Accordingly, if treating all four Rule 8210 requests as related, as Respondent claims they are, sanctions should be analyzed under the guidance for partial compliance.[208] A bar is "standard" even when there has been partial compliance, "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[209] Additionally,

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[202] *Saliba*, 2022 FINRA Discip. LEXIS 12, at *21.

[203] *Id*.

[204] *Kornman*, 2009 SEC LEXIS 367, at *23.

[205] *John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *7 n.16 (Aug. 23, 2019).

[206] FINRA's Sanction Guidelines (2024), at 1. *See* http://www.finra.org/sanctionguidelines.

[207] Guidelines at 93. The sole principal consideration in cases involving a complete failure to respond is the importance of the information requested as viewed from FINRA's perspective. Guidelines at 93.

[208] Guidelines at 93.

[209] Guidelines at 93.

where mitigation exists, the Guidelines also provide for a lesser sanction than a bar. If there is mitigation, adjudicators may suspend a respondent for up to two years and impose a fine between $5,000 and $20,000 for a partial response.[210]

In this case, we find that Respondent did not substantially comply with any of the four Rule 8210 requests and we are unaware of any mitigating factors. That means that a bar from associating with any FINRA member in any capacity is an appropriate sanction.

Although Respondent testified about his PUA benefits application in an OTR, he did not produce the document that would have revealed precisely what he told the New Jersey authorities about his securities business and income. And when he was later asked to explain when and how he came into possession of that document, which would have revealed whether he gave false testimony in his OTR, he refused to provide the information. His partial and vague OTR testimony was far from substantial compliance.

The Guidelines list three principal considerations relevant to the determination of appropriate sanctions in cases of a partial response: (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 and the time it took for the respondent to respond, including the degree of regulatory pressure required to obtain a response; and (3) the justifications offered by the respondent for the partial but incomplete response.[211]

These considerations strongly favor imposing a bar. With respect to the first two Rule 8210 requests seeking Respondent's application for PUA benefits and other documents and information, FINRA's investigation was blocked. Without the requested documents and information, FINRA could not determine whether he had been dishonest with the New Jersey authorities about his securities business and income for the purpose of obtaining pandemic-related unemployment compensation. FINRA made numerous informal requests by email from November 2023 through spring of 2024 for the documents and information[212] until, finally, it sought and took Respondent's testimony in an OTR. FINRA exerted a high degree of regulatory pressure, to no avail. And Respondent's justification for refusing to comply with the Rule 8210 request for his PUA benefits application, as discussed above, had no foundation. The case law consistently holds that the obligation to comply with a Rule 8210 request promptly and completely is "unequivocal."[213]

With respect to the other two Rule 8210 requests seeking to know how and when Respondent came into possession of his PUA benefits application for the purpose of determining

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[210] Guidelines at 93.

[211] Guidelines at 93.

[212] *See supra* Part II.C, II.E, and II.F.

[213] *See supra* Part II.H.1.

whether Respondent testified truthfully at his OTR, Respondent's position is even weaker. Regardless of the investigation into what Respondent told the New Jersey authorities about his securities business and income, FINRA has authority to investigate whether a respondent has given false testimony in an OTR. Respondent's refusal to tell FINRA anything about how and when he received a copy of his PUA benefits application stymied that investigation completely. His excuse for not complying—that these Rule 8210 requests were connected to the investigation of his application for PUA benefits—is without merit. FINRA has a vital interest in whether an associated person has testified in an OTR untruthfully.[214]

As the SEC has said,

> A Rule 8210 violation is serious because it subverts [FINRA's] ability to execute its regulatory responsibilities. [We have] held that individuals who violated Rule 8210 present too great a risk to the markets and investors to be permitted to remain in the securities industry.[215]

The Hearing Panel concludes that the appropriate sanction is a bar in all capacities. The bar is remedial because it will protect the investing public from a person who refuses to cooperate with a FINRA investigation and will also encourage others to respond to FINRA Rule 8210 requests promptly and completely. Such cooperation is essential to the investigation of potential industry misconduct.

IV. Order

By failing to comply promptly, fully and completely with FINRA's four requests pursuant to FINRA Rule 8210 for information and documents (dated November 28, 2023; February 13, 2024; August 13, 2024; and August 21, 2024), Respondent Brian J. Pavelko violated FINRA Rules 8210 and 2010, as alleged in the sole cause of action. For this misconduct, the Hearing Panel bars Respondent from associating with any FINRA member firm in any capacity. If this decision becomes FINRA's final disciplinary action, the bar shall become effective immediately.

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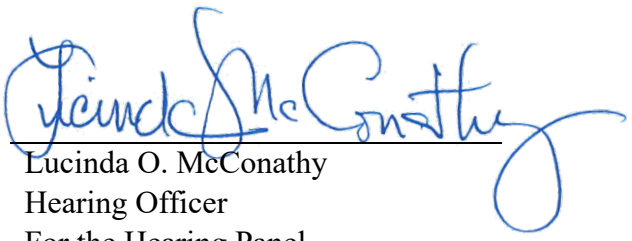
[214] *See supra* Part II.H.1. When Respondent's counsel initially told Enforcement that Respondent would not comply with the Rule 8210 requests, he said the application for PUA benefits would "not be produced unless and until there is a final ruling" on FINRA's authority to pursue the investigation. JX-8. To the extent that Respondent urges that he should not be sanctioned now because he has offered to comply later, that proposal must be rejected. It would delay and undermine FINRA's ability to investigate potential misconduct, not only in this case but in others. It would encourage every person subject to investigation to challenge FINRA's authority to investigate, creating indefinite delay and making it impossible for FINRA to fulfill its regulatory mission.

[215] *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 SEC LEXIS 241, at *9-10 (Feb. 2, 2021) (citation omitted).

Pavelko is also ordered to pay the hearing costs of $2,291.78, consisting of a $750 administrative fee and $1,541.78 for the cost of the transcript. The costs shall be due on a date set by FINRA but not sooner than 30 days after this decision becomes FINRA's final action.[216]



Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

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[216] The Hearing Panel considered all the parties' arguments. To the extent some arguments are not discussed here, they are accepted if consistent with this decision and rejected if not.