

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

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

JONATHAN KOHANOF
(CRD No. 5470296),

Respondent.

Disciplinary Proceeding
No. 20110275168-01

Hearing Officer - MC

HEARING PANEL DECISION

July 3, 2014

Respondent Jonathan Kohanof provided false information to FINRA when interviewed in connection with an insider trading investigation, in violation of FINRA Rules 8210 and 2010. The Hearing Panel bars him from associating with any FINRA member firm in any capacity.

Appearances

Joel S. Vengrin, Esq., and James J. Nixon, Esq., Rockville, Maryland, for the Department of Market Regulation.

Douglas R. Hirsch, Esq., Sadis & Goldberg LLP, New York, New York, for Respondent.

I. Introduction

In this case, the issue before the Hearing Panel is whether Respondent Jonathan Kohanof should be barred for violating FINRA Rules 8210 and 2010. The Complaint charges him with providing false information to FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") in an informal telephone interview conducted pursuant to FINRA Rule 8210 in the course of an insider trading investigation. For this misconduct, the Department of Market Regulation seeks to bar him from the securities industry.

Respondent admits that he was untruthful during the OFDMI telephone interview, but argues that a bar is not warranted because, approximately six weeks after the interview, he

volunteered to correct his false statements. Respondent argues that to impose a bar under these circumstances would be inadvisable for policy reasons because it would discourage others from correcting any false information provided to FINRA during an investigation.

After careful consideration of the evidence and arguments of the parties, for the reasons set forth below, the Hearing Panel concludes that the appropriate sanction for Respondent's misconduct, under the circumstances of this case, is a bar.

II. Findings of Fact and Conclusions of Law

This case is factually straightforward. It is undisputed that Respondent engaged in serious misconduct.

A. The Respondent's Background

Respondent is a 31-year old resident of Los Angeles, California. In April 2006, after graduating from college, he began a career in the securities industry as an analyst in the financial restructuring group of FINRA member firm Houlihan Lokey Capital, Inc. ("Houlihan"), where he worked for six years. In July 2009, Houlihan promoted Respondent to an associate's position. The position brought with it responsibilities that included managing analysts and working directly with clients, who were for the most part hedge funds and private equity firms. For the three and a half years Respondent held this position, he worked mostly on "creditor deals," handling matters that often involved material nonpublic information.¹ His work, Respondent testified, provided him with a clear understanding of issues and concerns relating to insider trading.²

¹ Hearing Transcript ("Tr.") (Kohanof) 158-59. References to the hearing transcript are referred to as "Tr." followed by name of the witness testifying and the page cited.

² *Id.* at 164-65.

Respondent's employment with Houlihan ended on October 15, 2012, and his FINRA registration terminated on October 30, 2012, when the firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5").³ Even though the Form U5 filed by the firm stated that the termination was "Voluntary," and Kohanof testified that he "left voluntarily," he felt that he was forced to leave.⁴

B. The Recommendation and Respondent's Stock Purchases

Respondent has a cousin, DS. According to Respondent, DS, who is a doctor, follows the market closely and subscribes to a "stock picker service."⁵ From time to time, DS recommends investments to Respondent.⁶ Over the three years preceding the events described in the Complaint, DS made a dozen or more investment recommendations to Respondent.⁷ Respondent testified that he usually accepted his cousin's recommendations without question.⁸

In April 2011, DS recommended that Respondent purchase stock in a particular company, Volcom, Inc.⁹ DS confided that he was going to buy shares of the stock because he thought it was a "good stock," and that he believed "it's gonna go up."¹⁰ As with prior recommendations, Respondent did not question his cousin or press him for details.¹¹ However, Respondent "did a

³ CX-3, at 4. Respondent was registered with FINRA through Houlihan as a General Securities Representative from March 2008, and a Limited Representative – Investment Banking from November 2009. *Id.* at 2.

⁴ Tr. (Kohanof) 156. Respondent is not currently registered or associated with a FINRA member firm. Nonetheless, FINRA retains jurisdiction over Respondent for the purposes of this disciplinary proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because the conduct described in the Complaint occurred while he was registered with a FINRA member, and the Complaint was filed on June 18, 2013, less than two years after the termination of his registration.

⁵ *Id.* at 165.

⁶ CX-20, at 4-6.

⁷ Tr. (Kohanof) 165-66.

⁸ CX-20, at 5-6.

⁹ Tr. (Kohanof) 168-69.

¹⁰ *Id.* at 167.

¹¹ *Id.* at 167-68.

little research,”¹² and approximately a week later, on April 18, 2011, made the first of two purchases of Volcom stock, buying 350 shares for \$8,495.13. On April 28, 2011, he made the second purchase, buying 200 shares for \$3,715.81.¹³

C. Volcom

Volcom designs and markets athletic apparel and accessories for youthful consumers. On May 2, 2011, Volcom and PPR, a retail clothing distribution company, publicly announced a merger through which PPR would acquire Volcom at \$24.50 per share.¹⁴ By the close of the market on the day the merger was announced, Volcom’s share price increased 24 percent over the closing price on the previous trading day.¹⁵

DS called Respondent on the day of the announcement. The two talked about how they both made money on the stock.¹⁶ Respondent testified at the hearing that after the conversation, he “tried to put two and two together,” but “did not push” his cousin to find out what prompted DS to recommend investing in Volcom so close in time to the merger announcement.

Respondent testified, “I guess maybe I didn’t want to know.”¹⁷

D. The Insider Trading Investigation

The spike in Volcom’s price caught the attention of OFDMI, and caused it to investigate. OFDMI focused on the period from December 16, 2010, through April 29, 2011, the last trading

¹² CX-20 at 4.

¹³ CX-4, at 7.

¹⁴ CX-1; Tr. (Causey) 40-41.

¹⁵ CX-2, at 1; Tr. (Causey) 42-43.

¹⁶ Tr. (Kohanof) 26.

¹⁷ *Id.* at 168.

day preceding the announcement. OFDMI determined that this was the period when material, nonpublic information about the merger existed.¹⁸

From its analysis of the data collected, OFDMI staff compiled a list of approximately 60 individuals and entities whose trading appeared to merit further review. On September 16, 2011, the staff sent the list to Volcom, PPR, and the investment bankers working with the companies. The staff asked them to circulate the list to anyone who had access to material, nonpublic information about the merger prior to the announcement. The staff requested that anybody who recognized a name on the list provide a description of the circumstances under which the individual or entity could have obtained advance knowledge of the merger. Because Respondent and DS had purchased Volcom shortly before the announcement of the merger, their names were on the list.¹⁹

Volcom's outside counsel responded on behalf of the company. The law firm disclosed that JN and AF, two of its attorneys working on the merger, knew DS. The attorneys explained that shortly before the merger, on April 8, 2011, they had taken a weekend trip to Las Vegas with DS.²⁰ In Las Vegas, the two attorneys met DS's cousin and a friend of the cousin, but did not recall their names.²¹

One of the attorneys, JN, disclosed that she and DS had been involved in a personal relationship from March to May 2011. During that period, JN stated that she communicated with DS several times a week, and saw him several times each month. JN denied divulging any information about Volcom to him. However, she stated that, for work purposes, she had in her

¹⁸ Tr. (Causey) 43-44.

¹⁹ *Id.* at 43-47; CX-7.

²⁰ CX-8, at 28-29.

²¹ CX-9, at 2.

possession binders containing documents relating to the Volcom merger. She had the binders with her at times when she and DS were together, at her home and at his home. JN stated that she did not know if DS looked through them.²²

Through the law firm, OFDMI asked JN to contact DS to learn the name of the cousin she met in Las Vegas, but she indicated that they had ended their relationship and were no longer communicating.²³

OFDMI then obtained DS's investment account statements from the FINRA member firm where DS maintained an account. From the statements, OFDMI learned that DS had purchased shares of Volcom on Friday, April 29, 2011, the trading day immediately preceding the merger announcement on Monday, May 2.²⁴

From a commercial information service, OFDMI learned that Respondent and DS might be related.²⁵ The staff then decided to interview Respondent.²⁶

E. The Rule 8210 Request

On January 4, 2012, OFDMI sent a letter to the chief compliance officer at Houlihan, Respondent's employer. The letter, under the authority of FINRA Rule 8210, requested an "informal telephone interview" with Respondent. The letter explained that the focus of the interview would be Respondent's trades in Volcom stock.²⁷ The chief compliance officer

²² CX-8, at 29.

²³ CX-9, at 1.

²⁴ Tr. (Causey) 50-51.

²⁵ *Id.* at 53.

²⁶ *Id.* at 55.

²⁷ CX-13.

forwarded the letter to Andrew Weinstein, Houlihan's securities and regulatory counsel responsible for responding to regulatory inquiries.²⁸

On January 5, 2012, Weinstein spoke with Respondent to discuss the OFDMI inquiry.²⁹ Respondent told Weinstein that someone had recommended Volcom, but claimed he could not recall the person's name.³⁰

On January 6, 2012, Respondent's lawyer called Weinstein about the OFDMI interview. Weinstein coordinated with the lawyer and OFDMI and scheduled the Rule 8210 telephone interview for January 10.³¹

F. The OFDMI Telephone Interview

Two attorneys representing Respondent were on the call, and Weinstein was also present.³² OFDMI did not transcribe the call and did not place Respondent under oath. OFDMI staff created a summary of the interview from contemporaneous notes.³³

In the interview, Respondent identified DS as his cousin. He described his close relationship with DS. Respondent said that they grew up together as brothers and were college roommates for a year. He said that they talk several times a week, and communicate by text and e-mail.³⁴

Respondent told OFDMI that he was familiar with the Volcom brand from growing up in Southern California and, in high school and college, associating with surfers and skateboarders.³⁵

²⁸ Tr. (Weinstein) 124-25.

²⁹ Tr. (Kohanof) 23, Tr. (Weinstein) 125-26.

³⁰ Tr. (Kohanof) 162.

³¹ Tr. (Weinstein) 126.

³² Tr. (Causey) 56-57.

³³ Department of Market Regulation's Pre-Hearing Br. 4.

³⁴ CX-14, at 2.

³⁵ *Id.* at 1.

Respondent stated that he had considered investing in the company for over a year.³⁶ He said that he reviewed financial reports, including Volcom's 2010 Securities and Exchange Commission Form 10K filing and a transcript of an end-of-year earnings conference call, before making his purchases.³⁷

Respondent denied speaking with anyone before the purchases, and specifically denied speaking with DS. He told the staff he sometimes talks with colleagues about investments, but not with family or friends. When asked if DS had bought any Volcom stock prior to the merger announcement, Respondent said he did not know.³⁸

Respondent also initially denied taking any trips in April 2011. According to a staff member, when Respondent was asked specifically if he had traveled to Las Vegas the weekend of April 8–10, 2011, “there was a pause. And he stuttered a little bit.”³⁹ The staff put the call on hold to allow Respondent time to consider his answer. After the pause, Respondent admitted that he had visited Las Vegas with a friend that weekend, and that DS may have been there. However, Respondent said he did not recall meeting anyone named JN or AF in Las Vegas.⁴⁰ He admitted he had spoken with his cousin prior to the OFDMI telephone interview, but denied that they discussed Volcom.⁴¹

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 2.

³⁹ Tr. (Causey) 70.

⁴⁰ *Id.* at 69-72.

⁴¹ CX-14, at 2-3.

G. The Aftermath of the OFDMI Telephone Interview

1. OFDMI

OFDMI immediately suspected that Respondent had not been truthful. While Respondent had confirmed that he was the cousin whom JN had described meeting in Las Vegas, he claimed not to recall meeting anyone named JN, and denied speaking with DS about Volcom, although both DS and Respondent purchased Volcom stock shortly before the merger announcement.⁴² As noted above, Respondent's first purchase of Volcom occurred on April 18, approximately a week after the Las Vegas trip.

To pursue the matter, the day after the telephone interview OFDMI sent Rule 8210 requests to Respondent's lawyers asking for Respondent's credit card statements, phone records, and electronic communications.⁴³ Because Respondent's telephone contact list was synchronized with Houlihan's Outlook system, Respondent's counsel suggested that the firm produce it.⁴⁴

On January 25, 2012, Houlihan provided OFDMI with Respondent's Outlook contacts. JN's name and number were on the list.⁴⁵

2. Respondent

Shortly after the OFDMI telephone interview, Respondent called DS and asked pointedly if he had obtained advance knowledge of the Volcom merger. Respondent claims that it was in this conversation that DS first informed him that he had learned about Volcom from the attorney, JN. According to Respondent, DS insisted that JN had not given him inside information about the merger, but had merely mentioned Volcom "in passing."⁴⁶ Respondent assumed, because JN

⁴² Tr. (Causey) 71-72.

⁴³ *Id.* at 72-73; CX-17.

⁴⁴ CX-18, at 2.

⁴⁵ Tr. (Causey) 74-76.

⁴⁶ CX-20, at 12-13.

was a corporate lawyer, that because she mentioned Volcom, DS inferred that something “might happen to the stock.” Respondent concedes that, at this point, shortly after the OFDMI telephone interview, he did not know if DS had done anything illegal, but suspected that “at the very least” DS had done “something unethical.”⁴⁷

Aware that Houlihan was providing FINRA with his cell phone contact information, and that DS had learned of Volcom from JN, Respondent deleted JN’s name and number from his contacts. He subsequently reconsidered, and re-entered the information.⁴⁸

3. Houlihan

Weinstein oversaw Houlihan’s response to OFDMI’s post-interview information request. Because Respondent had denied knowing JN to OFDMI, Weinstein was surprised to see JN’s name among Respondent’s phone contacts.⁴⁹ This prompted Weinstein to ask Houlihan’s Internet technology staff to review the metadata associated with the contact list to find out when JN’s contact information had been added. The metadata disclosed that Respondent had entered JN’s contact information on January 24, 2012, long after the Volcom merger announcement, two weeks after the OFDMI telephone interview,⁵⁰ and the day before Houlihan provided the contact list to FINRA.

Weinstein was concerned by this information, as well as by inconsistencies between what Respondent initially told Houlihan and what he said in the OFDMI telephone interview. These concerns prompted Weinstein to call Respondent on February 14, 2012. A Houlihan manager

⁴⁷ Tr. (Kohanof) 170-71.

⁴⁸ *Id.* at 27-29, 35.

⁴⁹ Tr. (Weinstein) 132.

⁵⁰ *Id.* at 133-34.

who joined Weinstein on the call told Respondent that Houlihan “expected him to be honest with FINRA.”⁵¹ Respondent replied that he would.⁵²

A few days later, on February 17, Weinstein again spoke to Respondent about the matter, and informed him that “the firm expected him to go back to FINRA and set the record straight.”⁵³ Later that day, Weinstein called Respondent yet again and bluntly stated that “if he didn’t come clean with FINRA, the firm would need to consider its next steps.”⁵⁴

Respondent then called his lawyer and informed him that he “wanted to correct ... mistakes” in the OFDMI interview. He said that he was “uncomfortable having lied” and he “wanted to fix it.”⁵⁵

In response, OFDMI promptly scheduled an on-the-record interview.

4. Respondent’s On-The-Record Interview

OFDMI took Respondent’s testimony on March 9, 2012. In his testimony, Respondent admitted that in the telephone interview he had not been “forthcoming” and “didn’t tell ... the truth.” He said he had decided to come forward because his firm was “adamant” that he do so.⁵⁶

Turning to the substance of DS’s recommendation, Respondent testified that all his cousin had said was, “I think you should buy this stock.” This was shortly after the Las Vegas trip; later that week, Respondent made his first purchase of Volcom.⁵⁷

The staff asked why Respondent had not, during the telephone interview, simply disclosed what DS said, “if all he said was you should buy Volcom?”⁵⁸ Respondent replied that

⁵¹ *Id.* at 135, 138.

⁵² *Id.* at 140.

⁵³ *Id.* at 135.

⁵⁴ *Id.* at 135-36.

⁵⁵ Tr. (Kohanof) 154-55.

⁵⁶ CX-20, at 39.

⁵⁷ *Id.* at 8-9.

in the days leading up to the interview, he had tried to reach DS, but his cousin “said he didn’t want to talk, he was busy” and Respondent “got scared.” He “thought that something else was going on” and “didn’t want to implicate [DS] in anything.”⁵⁹

When asked about possessing JN’s contact information, Respondent stated that the only time he met JN was on the Las Vegas trip. She told him that she worked for a law firm and was a corporate attorney.⁶⁰ Respondent was unclear about how JN’s name and number were entered into his contact list. He stated that he may have entered the information, but “[i]t could have been my cousin putting her name in my phone book in case we got separated.”⁶¹

Respondent testified that when the staff asked him about JN during the OFDMI telephone interview, he honestly did not recall her name, or the other attorney’s name, and that when he told the staff that he did not recall meeting someone named JN in Las Vegas, he was telling the truth.⁶²

Respondent testified that it was only after the telephone interview, when FINRA asked Respondent for his telephone contact list, and after DS told him that it was JN who mentioned Volcom, that he noticed JN’s name on his contact list. He claimed that he deleted it because “there was no reason” for her name to be on the list. Then, realizing that OFDMI might discover the deletion, which would “probably create more headaches,” he testified that he re-entered JN’s

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 10-11.

⁶⁰ *Id.* at 15-16.

⁶¹ *Id.* at 20. The printout of the contact list consisted of seven pages, with 12 to 15 contacts per page. JN is one of only two people listed whom he had met only once. *Id.* at 27-28.

⁶² Tr. (Kohanof) 27; CX-20, at 18.

name and number “pretty much right away.”⁶³ Thus, the contact information for JN was on the list Houlihan provided to OFDMI.

Respondent admitted that he had been untruthful to Houlihan when he told the firm that he deleted JN’s information by mistake. In fact, it was intentional.⁶⁴

5. Respondent’s Hearing Testimony

At the hearing, Respondent admitted that he understood that the information OFDMI sought from him was important to FINRA. He reiterated that he had lied to protect his cousin, not himself.⁶⁵

When asked why he had not come forward immediately after the telephone interview, Respondent answered simply, “I don’t have a good answer for that.” He said that he was “scared,” his family was involved, and he “wasn’t sure ... how best to handle this situation.” He expressed remorse and wished that he had “made a different decision.”⁶⁶

III. Discussion

Respondent’s false statements to OFDMI were not inadvertent or thoughtless. They were intentional. Respondent had advance notice of the telephone interview. He prepared for it. He was represented by counsel during it. He understood the importance of the information OFDMI sought. Furthermore, by Respondent’s own account, DS’s refusal to speak with him in the days preceding the interview made Respondent suspicious that his cousin had engaged in conduct that was unethical, if not illegal.

⁶³ Respondent testified that he also directed his attorney to inform FINRA that JN’s name was on his contact list. CX-20, at 30-33, 37-38.

⁶⁴ *Id.* at 36.

⁶⁵ Tr. (Kohanof) 24-25.

⁶⁶ *Id.* at 172.

It is also revealing of Respondent's state of mind that, after the OFDMI telephone interview, when FINRA asked for his contact list, he deleted JN's name and number. Although he claimed that he did this simply because he did not need JN's contact information, the deletion was consistent with his intent to hide a significant fact. Only when he realized that his deletion could be discovered, and could be interpreted as an attempt to conceal information from FINRA, did Respondent restore JN's name and number to his contact list. And it was only after Houlihan insisted that he "come clean" with OFDMI, and admonished him that if he did not do so the firm would find it necessary to take action, that Respondent acted to correct the record.

It is well established that FINRA member "firms and associated persons violate Rule 8210 when they fail to provide full and prompt cooperation" in response to requests for information.⁶⁷ The evidence clearly establishes that that Respondent was untruthful in the OFDMI telephone interview, conducted pursuant to Rule 8210. Therefore, the Hearing Panel finds that Respondent violated FINRA Rules 8210 and 2010.⁶⁸

IV. Sanctions

FINRA's Sanction Guidelines state that the standard sanction for a person who fails to respond to a request for information made pursuant to FINRA Rule 8210 should be a bar.⁶⁹ The Securities and Exchange Commission has observed that providing untruthful answers in response to Rule 8210 inquiries is even more serious than simply refusing to respond, because of the potential to mislead regulators, and to delay or frustrate an investigation.⁷⁰ Thus, in a case with no mitigating factors, the SEC has held that "the failure to provide truthful responses to requests

⁶⁷ *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009).

⁶⁸ A violation of FINRA rules or securities laws is also a violation of Rule 2010. *See Kirlin Sec., Inc.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at *65 (Dec. 10, 2009).

⁶⁹ *FINRA Sanction Guidelines* 33 (2013).

⁷⁰ *Michael A. Rooms*, 58 S.E.C. 220, 229-30 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

for information renders the violator presumptively unfit for employment in the securities industry.”⁷¹

A. The Recommendations of the Parties

1. Market Regulation

Market Regulation strongly urges the Hearing Panel to impose a bar, stressing that Respondent’s statements “were false and designed to conceal information from FINRA.”

Market Regulation argues that the information Respondent concealed was essential to the Volcom insider trading investigation. OFDMI had established a nexus between JN, who possessed material, nonpublic information about the Volcom merger, and DS. Thus, in Market Regulation’s view, Respondent’s denial that he knew JN, and his denial that DS, who had dated JN, discussed Volcom with him, impeded FINRA’s investigation.⁷²

Market Regulation further argues that these facts implicate two additional aggravating factors.⁷³ First, Respondent’s false responses were designed to conceal information and to mislead OFDMI.⁷⁴ Second, Respondent’s false responses were intentional, not the product of negligence or reckless misjudgment.⁷⁵

2. Respondent

Respondent argues strenuously that imposition of a bar would be, under the circumstance of this case, unduly punitive and serve no remedial purpose. Respondent contends that he made

⁷¹ *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *32-33 (Aug. 22, 2008).

⁷² Department of Market Regulation’s Pre-Hearing Br. 12-13.

⁷³ *Id.* at 13-14.

⁷⁴ *Guidelines* at 7 (Principal Consideration in Determining Sanctions No. 12).

⁷⁵ *Id.* (Principal Consideration in Determining Sanctions No. 13).

the “mistake” of being untruthful in the OFDMI interview because he panicked and acted on impulse to protect a member of his family.⁷⁶

Respondent maintains that imposing a bar would be bad policy because it would send “the wrong message,” by not providing an incentive to correct the record after a person fails to respond truthfully to a Rule 8210 request for information.⁷⁷

Respondent insists that there are mitigating factors. By directing his attorney to inform FINRA that he wanted to correct the record, he claims that he “saved [FINRA] incredible resources.” He notes that FINRA was able to close its investigation less than three weeks after he corrected his untruthful telephone interview.⁷⁸ Respondent argues that he made this prompt closure possible because he had “quickly alerted [FINRA] to the truth.”⁷⁹

In addition, Respondent disputes Market Regulation’s argument that the importance of the information he concealed is an aggravating factor. Respondent contends that OFDMI already knew most of the answers to the questions it posed to him, and thus FINRA was not actually prejudiced by his untruthfulness.⁸⁰

3. Discussion

a. The Importance of the Information

The first Principal Consideration in Determining Sanctions for Rule 8210 violations in the Sanction Guidelines focuses on the importance of the information to FINRA. The Hearing Panel must view the importance of the information from the perspective of FINRA at the time of

⁷⁶ Tr. 15.

⁷⁷ Tr. 184.

⁷⁸ *Id.*

⁷⁹ *Id.* at 185-86.

⁸⁰ *Id.* at 186-87.

the telephone interview. Investigations often begin before FINRA staff comprehends the breadth of the potential misconduct.

The Parties strongly disagree about the importance of the information Respondent concealed. Market Regulation characterizes it as “crucial.” Respondent contends that this is an overstatement, in part because there is no evidence that his untruthfulness significantly thwarted the progress of the investigation. In addition, there is no evidence that Respondent knew at the time of the OFDMI telephone interview that DS had learned of Volcom from an attorney working on the merger.

But Respondent attempted to conceal from OFDMI that (i) DS made the recommendation to him, and (ii) as a result, both Respondent and his cousin made profitable purchases of Volcom stock just before the merger announcement. In the telephone interview, Respondent represented that he had purchased the stock as a result of his independent research. Even though OFDMI was immediately suspicious that Respondent was being untruthful, the Hearing Panel must consider the context: OFDMI was investigating to determine whether potentially serious misconduct, insider trading, had occurred. Even if Respondent’s misrepresentations were transparent and ineffectual in concealing the truth, the sanctions imposed must not suggest that lying to FINRA investigators pursuing serious possible misconduct is inconsequential.

b. Respondent’s Decision to Correct the Record

The Hearing Panel rejects Respondent’s arguments that there are mitigating factors present and that a bar in this case would be bad policy.

First, Respondent did not move unilaterally and quickly to correct the record. The evidence shows that Respondent came forward only after Houlihan gave him an ultimatum. Thus we cannot conclude, on the basis of the evidence here, that when Respondent contacted FINRA,

he “accepted responsibility for and acknowledged the misconduct ... prior to detection and intervention by the firm ... or a regulator.”⁸¹

Second, the Sanction Guidelines state that, for a complete failure to respond to a Rule 8210 request for information, “a bar should be standard.”⁸² As noted above, providing false information is deemed as serious as completely failing to respond.⁸³ It has been observed that of the approximately 80 sanction guidelines, the guideline for Rule 8210 violations is one of only three calling for a bar as the standard sanction, absent mitigating factors.⁸⁴

In a context such as this, general deterrence is an important consideration. As it has been noted by the Securities and Exchange Commission, misconduct investigated by FINRA may result in the imposition of a range of sanctions less than a bar; consequently, members and associated persons should be mindful that cooperating by providing truthful information “is their best chance of avoiding the bar that they will almost certainly receive for non-cooperation (in the absence of mitigating factors). The general deterrence effects of a bar and the threat of a bar are substantial.”⁸⁵

c. Respondent’s Deletion of Contact Information

The Hearing Panel is also concerned about Respondent’s deletion of JN’s name and phone number from his list of contacts. First, by his account, Respondent made the deletion after OFDMI asked if he knew JN, after DS disclosed that he heard about Volcom from JN, and after OFDMI requested Respondent’s phone records. Second, as Respondent admits, he was

⁸¹ *Guidelines* at 6 (Principal Considerations in Determining Sanctions Nos. 2 and 3).

⁸² *Guidelines* at 33.

⁸³ *Ortiz*, 2008 SEC LEXIS 240, at *32-33; see also *Dep’t of Enforcement v. Legacy Trading Co., LLC*, No. 2005000879302, 2010 FINRA Discip. LEXIS 20, at *41 (N.A.C. Oct. 28, 2010).

⁸⁴ *Paz Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *8-9 (Apr. 11, 2008) (noting that a complete failure to cooperate with requests for information, to which untruthful responses are comparable, is “fundamentally incompatible” with FINRA’s self-regulatory function.)

⁸⁵ *Id.* at *15.

untruthful with his firm when he said he made the deletion by mistake. Third, the deletion involved evidence that FINRA could use to link him to a possible inside source of information about his purchase of Volcom.

Respondent correctly recognized that the deletion could be evidence of intent to conceal information, an aggravating factor recognized by the Guidelines.⁸⁶ While it is true that he replaced the contact information prior to FINRA's discovery of the deletion, he did not do so until January 24, 2012, when he knew that Houlihan was about to provide his Outlook records to FINRA, and that his deletion could be discovered, with potentially serious consequences for him.

For all of these reasons, the Hearing Panel discerns no mitigating circumstances that warrant imposing a sanction less than a bar.

V. Order

For providing false information to FINRA when interviewed in connection with an insider trading investigation, in violation of FINRA Rules 8210 and 2010, Respondent Jonathan Kohanof is barred from associating with any FINRA member firm in any capacity.⁸⁷ If this Hearing Panel Decision becomes FINRA's final disciplinary action, Respondent's bar shall be effective immediately.

HEARING PANEL.

By: Matthew Campbell
Hearing Officer

Copies to:

Jonathan Kohanof (*via overnight courier and first-class mail*)
Douglas R. Hirsch, Esq. (*via electronic and first-class mail*)
Joel S. Vengrin, Esq. (*via electronic and first-class mail*)
James J. Nixon, Esq. (*via electronic mail*)

⁸⁶ *Guidelines* at 6 (Principal Consideration in Determining Sanctions No. 10).

⁸⁷ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.