

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 10-05 (20080121376).

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

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. 20080121376

Hearing Officer – SNB

**ORDER DENYING MOTION TO DISMISS**

On February 25, 2010, the Department of Market Regulation (“Market Regulation”) filed a Complaint in this matter. On July 26, 2010, Respondent filed a motion to dismiss for lack of jurisdiction, arguing that the Complaint was filed more than two years after the termination of his association with a FINRA member. On August 3, 2010, Market Regulation filed an opposition to the motion. For the reasons set forth below, Respondent’s motion is denied.

There is no dispute that the Form U5 filed by Respondent’s firm (“the Firm”), was filed on March 11, 2008, and reflected that Respondent’s termination date was February 29, 2008. Respondent argues that the termination date indicated on the Form U5 filed by the Firm was incorrect; beginning January 2008, he was devoting all of his time to a non-member firm affiliate.<sup>1</sup>

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<sup>1</sup> As Market Regulation points out, this contention is contradicted by Respondent’s earlier assertion in his October 10, 2009, Rule 8210 Response to FINRA Staff that his termination occurred in February 2008. *See* Exhibit B to Market Regulation’s opposition to Respondent’s motion to dismiss.

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Article V, Section 4 of FINRA's By-Laws provides:

A person whose association with a member has been terminated and is no longer associated with any member of the Corporation ... shall continue to be subject to the filing of a complaint under the Corporation Rules based upon conduct which commenced prior to the termination ..., but any such complaint shall be filed within:

- (a) two years after the **effective date of termination of registration** pursuant to Section 3 .... (emphasis added).

Article V, Section 3(a) provides:

Following the termination of the association with a member of a person who is registered with it, such member shall, not later than 30 days after such termination, give notice of the termination of such association to the Corporation... and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Corporation.

The SEC has construed these provisions to mean that FINRA's jurisdiction is predicated not on termination of employment or association but on termination of registration, which is effective upon FINRA's receipt of the Form U5 termination notice. *In re the Application of Donald M. Bickerstaff*, Securities Exchange Act Release No. 35607, 1995 SEC LEXIS 982, at \*5 (April 17, 1995). FINRA has also made clear that the effective date of termination is the date that the Form U5 termination notice is **filed**. *Dept. of Enforcement v. Liu*, 1999 NASD Discip. LEXIS 32,\*12 (NAC Nov. 4, 1999; *NASD Notice to Members*, 92-19 (April 1992)). Therefore, Respondent's last date of employment is not the determinative measure. Rather, the two-year jurisdictional period begins when the Form U5 is filed<sup>2</sup>.

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<sup>2</sup> While there is a dispute as to whether the Form U5 was timely filed, this is irrelevant. *Liu*, at \*12 (rejecting an argument that late filing of the Form U5 shortened the two-year jurisdictional window, holding "[i]t has long been established that the Association's jurisdiction is determined not from the termination of an individual's employment or association with a firm, but from the effective date of termination of the individual's registration, which is the date of [FINRA's] receipt of a Form U5.")

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As applied to this case, the Form U5 notice was filed on March 11, 2008. *See* Exhibit A to Market Regulation's opposition to Respondent's motion to dismiss. Accordingly, FINRA had jurisdiction to initiate this action on February 25, 2010, when the Complaint was filed.

**SO ORDERED.**

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Sara Nelson Bloom  
Hearing Officer

Dated: August 17, 2010