

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEREMY D. HARE
(CRD No. 2593809),

Respondent.

Disciplinary Proceeding
No. 2008014015901

Hearing Officer – MAD

HEARING PANEL
DECISION

September 18, 2012

Respondent is barred from associating with any member in any capacity for providing false information and testimony to FINRA in connection with its investigation of his trading, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, as described in the Second Cause of Action. The Hearing Panel dismissed the First Cause of Action because the Department of Enforcement failed to prove by a preponderance of the evidence that Respondent exercised discretion without written authorization, in violation of NASD Conduct Rules 2510(b) and 2110.

Appearances

For the Complainant: David F. Newman, Sr. and Aismara J. Abreu, FINRA,
DEPARTMENT OF ENFORCEMENT, Philadelphia, PA.

For Respondent: Jeremy D. Hare, pro se.

DECISION

I. BACKGROUND AND PROCEDURAL HISTORY

The Department of Enforcement (“Enforcement”) initiated this disciplinary proceeding against Respondent Jeremy D. Hare (“Hare”), following an investigation into the settlement of a customer complaint reflected in Hare’s Uniform Termination Notice

for Securities Industry Registration (Form U5), which was filed by his former firm, Wells Fargo Advisors, LLC (“Wells Fargo”) (f/k/a Wachovia Securities, LLC).

Enforcement filed the Complaint with the Office of Hearing Officers on March 9, 2011. In the First Cause of Action, Enforcement alleges that, from March through September 2007 (the “Relevant Period”), Hare exercised discretionary power with respect to approximately 41 trades in the LS Trust account maintained at Wells Fargo without first obtaining (1) the written authority of Customer MS, who had power of attorney over the account, and (2) Wells Fargo’s acceptance of the account as discretionary, in violation of NASD Conduct Rules 2510(b) and 2110.¹ In Hare’s Answer, filed on April 1, 2011, he denied exercising discretion in the LS Trust.² Rather, Hare stated that he spoke to MS and she approved the trades he entered.³

In the Second Cause of Action, Enforcement alleges that Hare provided false information and testimony to Enforcement during its investigation, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Specifically, Enforcement alleges that Hare provided false information and testimony when: (1) he stated that he had no involvement with certain trades in the LS Trust and asserted the trades were entered by one of his partners, either George MacKenzie (“MacKenzie”) or Paul Lofurno (Lofurno”), and (2) he claimed that Lofurno admitted to placing the trades during a

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. The applicable rules are available at www.finra.org/rules.

² Answer ¶ 1.

³ Answer ¶¶ 1, 5.

meeting at their Wells Fargo office. In his Answer, Hare denied that the information he provided to FINRA was false.

The hearing was held in Philadelphia, Pennsylvania on May 9-10, 2012, by a hearing panel composed of the Hearing Officer, a current member of the District 7 Committee, and a current member of the District 9 Committee. Enforcement called five witnesses to testify at the hearing: Hare; Customer MS; MacKenzie, a registered representative with Wells Fargo; Lofurno, a registered representative with Wells Fargo; and Bonnie McLaughlin, a FINRA Principal Examiner. Enforcement also offered 32 exhibits, each of which was admitted into evidence without objection. Hare testified on his own behalf and called Christian Huber (“Huber”), a former compliance specialist with Wells Fargo. He offered seven exhibits, which were admitted into evidence without objection.⁴

Based upon a careful review of the entire record, the Hearing Panel makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Respondent

Hare entered the securities industry in February 1995.⁵ From October 1999 through April 2008, he was registered with FINRA as a General Securities Representative with Wells Fargo.⁶ Wells Fargo permitted Hare to resign on April 15,

⁴ In this decision, “Vol. 1” refers to the transcript of the hearing on May 9, 2012; “Vol. 2” refers to the transcript of the hearing on May 10, 2012; “CX” to Enforcement’s exhibits; and “RX” to Respondent’s exhibits.

⁵ CX-1, at 1, 5.

⁶ *Id.* at 3.

2008, citing differences over investment philosophies.⁷ Currently, Hare is associated with another FINRA member firm and registered with FINRA as a General Securities Representative.⁸

At Wells Fargo, Hare was part of a four-person revenue-sharing partnership, which included MacKenzie, Lofurno, and another registered representative.⁹ All four partners shared their commissions according to a pre-determined schedule.¹⁰

B. Discretionary Trading Without Authorization

The First Cause of Action alleges that Hare exercised discretion in the LS Trust account without written authorization from MS or approval from Wells Fargo, in violation of NASD Conduct Rules 2510(b) and 2110. In this case, it is undisputed that (1) the LS Trust account was not a discretionary account and (2) MS never provided Hare with written authority to exercise discretion in the LS Trust account.¹¹ As noted above, Hare's defense to this allegation is that he did not exercise discretion because he spoke to MS regarding the trades. Accordingly, the Hearing Panel focused on Hare's trading in the LS Trust account, his communications with MS, and corroboration of his communications.

⁷ *Id.*, CX-11, at 2.

⁸ CX-1, at 1.

⁹ Vol. 1, at 131-32, 196.

¹⁰ Vol. 1, at 131-32, 199.

¹¹ CX-9, at 1, CX-11, at 2; Vol. 2, at 69, 94-95.

1. Hare's Trading in the LS Trust Account

In May 2006, Hare became the registered representative for the LS Trust account,¹² which was previously handled by MacKenzie.¹³ In February or March 2007, MS and Hare discussed concerns about the “subprime [mortgage] fallout” and “defensive repositioning” for the LS Trust account.¹⁴ Thereafter, during the Relevant Period, Hare executed approximately 41 trades in the LS Trust account, which are the subject of this Complaint. The specific trades are delineated below:

Trade Date	P/S	Quantity	Securities Description
3/13/2007	S	-50,000.000	CS First Boston 05-3 3A2
3/13/2007	S	-20,000.000	Countrywide Home Loans
3/13/2007	S	-33,000.000	Countrywide HM 05-25-A5
3/13/2007	S	-13,000.000	FHLMC 2722 BX
3/13/2007	S	-50,000.000	GSR MTG SECS Corp
3/14/2007	P	6,476.684	Loomis Sayles FDS II
3/14/2007	S	-13,000.000	Countrywide 05-J8 1A4
3/14/2007	S	-28,000.000	Countrywide 05-23CB A16
3/14/2007	S	-25,000.000	FHLMC 3033 X
3/14/2007	S	-50,000.000	FHLMC 3066 DD
3/14/2007	S	-50,000.000	Credit 2006-4 1A12
3/15/2007	P	20,000.000	Fannie Mae
3/15/2007	P	23,000.000	Federal Natl Mtg Assn
3/15/2007	P	8,944.544	Eaton Vance
3/16/2007	P	25,000.000	Freddie Mac
3/16/2007	P	22,000.000	Freddie Mac
3/16/2007	P	13,000.000	Freddie Mac
3/16/2007	P	10,000.000	Freddie Mac
3/19/2007	P	1,943.005	Loomis Sayles FDS II
5/21/2007	S	-2,500.000	Alpine Total Dynamic
5/24/2007	P	5,000.000	Blackrock Intl Growth
6/6/2007	S	-22,000.000	Freddie Mac

¹² LS, MS's mother, established the LS Trust account at a Wells Fargo in 1999. CX-2, at 1-2. MS was a beneficiary of the LS Trust and the power of attorney on the account. Vol. 1, at 31; CX-2, at 3-8; CX-7, at 1. By 2005, as a result of LS's deteriorating health condition, MS made all of the decisions regarding the LS Trust account. Vol. 1, at 143.

¹³ CX-2, at 1; CX-6, at 1; Vol. 1, at 35-36.

¹⁴ CX-6, at 1; CX-16, at 1. MS specifically recalls Hare mentioning the Countrywide stock, which she knew had some exposure. Vol. 1, at 39-40.

Trade Date	P/S	Quantity	Securities Description
6/6/2007	S	-10,000.000	Freddie Mac
6/6/2007	S	-16,000.000	FHLMC 2977 DE
6/22/2007	S	-64,000.000	Mastr Asset 03-7 4A21
6/25/2007	S	-25,000.000	Freddie Mac
6/25/2007	S	-20,000.000	Fannie Mae
6/25/2007	S	-23,000.000	Federal Natl Mtg Assn
6/25/2007	S	-50,000.000	Fannie Mae
6/26/2007	S	-25,000.000	Fannie Mae
6/26/2007	S	-31,000.000	Fannie Mae
6/26/2007	P	10,000.000	Calamos Global Dynamic
6/27/2007	P	5,000.000	Dividend Capital
6/29/2007	S	-1,175.460	Cohen & Steers Intl
6/29/2007	S	-677.915	Hartford Mut Fds Inc.
6/29/2007	S	-13,000.000	Tennessee Valley Author
7/26/2007	P	5,000.000	Claymore/Guggenheim
8/1/2007	S	-5,000.000	Dividend Capital
9/14/2007	P	1,000.000	Aegon N V 7.25%
9/24/2007	P	15,821.000	First Trust
9/24/2007	S	-10,000.000	Calamos Global Dynamic

MS did not receive trade confirmations for the above trades because, during the Relevant Period, she was not living at her primary residence in Michigan and her mail was not forwarded.¹⁵ On September 24, 2007, she returned to Michigan and reviewed the confirmations for the above trades that Hare had executed in the LS Trust account.¹⁶ MS testified that she was unfamiliar with the trades.¹⁷

On October 1, 2007, MS called Hare and directed him to stop all trading in the LS Trust account.¹⁸ On October 11, 2007, she called Huber, Wells Fargo's compliance specialist at the branch office where Hare worked, and complained about Hare's trading

¹⁵ Between December 2006 and May 2007, MS was living in Florida. During July and August 2007, she traveled within the United States. From the end of August until September 24, 2007, MS took an extended European vacation. CX-9, at 1; Vol. 1, at 108.

¹⁶ CX-6, at 1; CX-9, at 1, 4.

¹⁷ Vol. 1, at 47.

¹⁸ CX-6, at 1; CX-19, at 36; Vol. 1, at 48.

in the LS Trust account.¹⁹ Specifically, MS complained that Hare had engaged in churning and unauthorized trading in the LS Trust account.²⁰

2. MS's and Hare's Communications

MS and Hare have conflicting recollections of their communications regarding the 41 trades during the Relevant Period. According to MS, she had very little contact with Hare in 2007.²¹ She recalled their discussion of the subprime mortgage fallout and defensive repositioning of the LS Trust account in February or March of 2007. However, it was her understanding that the repositioning involved only one particular stock.²² MS also acknowledged that she called Hare approximately every other month in order to obtain funds for her mother's living expenses.²³ Other than their discussion of the defensive repositioning in response to the subprime mortgage fallout and her calls for withdrawals, the only other conversation MS remembered from 2007 was her telephone call with Hare on October 1, 2007, directing him to stop all trading in the LS Trust account.²⁴

Hare, on the other hand, asserted that he spoke to MS about all 41 trades.²⁵ He testified that when MS called about withdrawals, they would also discuss trades in the LS Trust account.²⁶ Hare identified specific calls from MS's cell phone records that

¹⁹ CX-5, at 1-2; CX-6, at 1. MS testified that she called Huber on October 3; Vol. 1, at 48-49, however, the records from Wells Fargo indicate that the call took place on October 11, 2007. CX-5, at 1.

²⁰ CX-5, at 2. MS followed her verbal complaint with a written complaint, dated October 29, 2007, in which she repeated her allegations. CX-6.

²¹ Vol. 1, at 41.

²² Vol. 1, at 39-40.

²³ Vol. 1, at 38-39.

²⁴ Vol. 1, at 35-41, 43-48.

²⁵ Vol. 2, at 95.

²⁶ Vol. 2, at 145.

correlated to the trades at issue.²⁷ Hare explained that, as reflected in the examples below, while he and MS discussed buying and selling stocks on a particular day, it could take days or weeks to get a bid on some of the securities in the LS Trust account because the collateralized mortgage obligation (CMO) market was falling apart.²⁸ For example, MS's cell phone records reflected an eight-minute call on March 13 that, according to Hare, correlated to the trades on March 13-19, 2007.²⁹ Another example related to a five-minute call on June 22, 2007.³⁰ According to Hare, that call related to the trades on June 22-26, 2007.³¹ Hare testified that he then used the proceeds from those stock sales to purchase the initial public offerings for the LS Trust on June 26 and 27.³² Hare argued that, while he was able to match most of the trades to calls on MS's cell phone records, he was unable to match every trade to a call because of the incomplete documentary evidence.³³

3. Documentation of MS's and Hare's Communications

In an attempt to reconcile MS's and Hare's differing versions of the events, the Hearing Panel reviewed the documentary evidence; however, it did not assist the Panel for several reasons.

First, the Wells Fargo phone records did not capture all of the potential telephone lines on which Hare could make and receive telephone calls.³⁴ When describing the phone system at Wells Fargo, Hare explained that a call could bounce from one phone

²⁷ Vol. 2, at 76.

²⁸ Vol. 2, at 76, 141-42.

²⁹ Vol. 2, at 83, 135-36; CX-19, at 5.

³⁰ CX-10, at 1, 18.

³¹ Vol. 2, at 142-43.

³² Vol. 2, at 142-43.

³³ Vol. 2, at 80, 117.

³⁴ Vol. 2, at 80.

line to another.³⁵ In addition, Hare stated that the Wells Fargo account statements sent to his clients all had MacKenzie's telephone number printed on them, not his.³⁶ Because FINRA did not obtain the phone records for MacKenzie and Lofurno,³⁷ it is not possible to know if a call from MS came into one of their phone lines and then was transferred to Hare.

Second, the phone records that Wells Fargo produced, which it obtained from the telephone company, may not be complete because Wells Fargo produced additional records for the same period when it received a second Rule 8210 request from FINRA. Initially, the FINRA examiner requested Wells Fargo's phone records for its 800 number and Hare's assigned numbers.³⁸ Then, when the FINRA examiner sent another request to Wells Fargo to ensure that FINRA obtained all telephone calls associated with phone lines assigned to Hare,³⁹ Wells Fargo responded with additional records, reflecting four more calls on March 13, 2007.⁴⁰

Third, Hare testified that he used his cell phone extensively to communicate with clients during his long commute to and from work.⁴¹ However, during the investigation,

³⁵ Vol. 2, at 116.

³⁶ Vol. 2, at 86.

³⁷ Vol. 2, at 87.

³⁸ Vol. 1, at 244; Vol. 2, at 55.

³⁹ Vol. 1, at 244-45; CX-15, at 2. The FINRA examiner requested records for more telephone lines that could be associated with Hare. Vol. 1, at 250.

⁴⁰ Vol. 1, at 249-50; CX-20.

⁴¹ Vol. 2, at 89. Hare explained that he attempted to get a detailed report of his calls during the Relevant Period, but that his cell phone company could only provide his phone records for the prior 12 months. *Id.*

Hare told the FINRA examiner that he never used his cell phone to call clients.⁴² Based on Hare's response, the FINRA examiner did not request Hare's cell phone records.⁴³

Fourth, there was no evidence of telephone records from MS's land lines. While MS testified that she primarily used her cell phone to communicate with Hare, Hare testified that he spoke to MS on several other numbers, including her land lines at her homes in Florida and Michigan.⁴⁴ Hare emphasized that even FINRA's examiner called MS on all of her telephone numbers, including her land lines, when attempting to reach her.⁴⁵

Lastly, Hare argued that because Wells Fargo did not permit him to collect his files on his last day of employment, and failed to preserve all of his files, he was unable to provide evidence of his spiral notebooks, which he asserted reflect every telephone call he made with his clients during the Relevant Period.⁴⁶ Although FINRA requested Hare's spiral notebooks from Wells Fargo, the notebooks were not among the materials provided.⁴⁷

4. Conclusion

NASD Conduct Rule 2510(b) prohibits a registered representative from exercising any discretionary power in a customer's account unless such customer has

⁴² Vol. 1, at 269, 278; CX-31.

⁴³ Vol. 1, at 269, 278.

⁴⁴ Vol. 2, at 76-77. MS acknowledged that she had land lines in her Florida and Michigan homes. She explained that because of her travel she primarily used her cell phone to communicate with Hare and others. Vol. 1, at 41. MS also stated that when she was in Europe during the month of September, she used an international calling card to call the United States because her cell phone would have been too expensive. Vol. 1, at 105-06. Hare argued that MS was not credible because her cell phone records reflected numerous calls from Spain and France. Vol. 2, at 77; CX-19, at 28-29, 37-39.

⁴⁵ Vol. 2, at 77; Vol. 1, at 290, 295.

⁴⁶ Vol. 2, at 117, 127-28.

⁴⁷ Vol. 2, at 116-18, 122-25, 153-54.

given prior written authorization and the representative's firm has accepted the account.⁴⁸ Here, Hare testified that MS had authorized all of the trades at issue.⁴⁹ However, MS testified that she had not authorized any of the trades. The Hearing Panel finds that, as a result of the disputed facts in this case and the lack of corroborating documentary evidence, it is not possible to find by a preponderance of the evidence that Hare exercised discretionary power in the LS Trust account, in violation of NASD Conduct Rules 2510(b) and 2110. Accordingly, the Hearing Panel dismisses the First Cause of Action.

C. Hare's False Information to FINRA

The Second Cause of Action alleges that Hare provided false information and testimony to FINRA, in violation of FINRA Rules 8210 and 2010. Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA orally or in writing in response to requests for information. The Rule prohibits providing false or misleading information to FINRA in connection with an examination or investigation.⁵⁰

As part of FINRA's investigation into Hare's handling of the LS Trust account, the FINRA staff sent requests for information and on-the-record testimony ("OTR") to Hare pursuant to FINRA Procedural Rule 8210.

⁴⁸ See, e.g., *Paul F. Wickswat*, 50 S.E.C. 785 (1991).

⁴⁹ As discussed below, Hare also testified that he had no involvement in the five trades that occurred in the LS Trust account from July through September 2007.

⁵⁰ See *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, 2012 FINRA Discip. LEXIS 42, at *64-68 (N.A.C. May 1, 2012) (finding the respondents violated NASD Rules 8210 and 2110 by providing false and misleading information and testimony to FINRA); *John Montelbano*, Exchange Act Rel. No. 47227, 2003 SEC LEXIS 153, at *36-38 (Jan. 22, 2003) (upholding NASD's finding that respondents violated Procedural Rule 8210 by giving false testimony during an on-the-record interview); *Brian L. Gibbons*, 52 S.E.C. 791, 795 (1996) ("Providing misleading and inaccurate information to the NASD is conduct contrary to high standards of commercial honor and is inconsistent with just and equitable principles of trade."), *aff'd*, 112 F.3d 516 (9th Cir. 1997) (table format).

On June 3, 2009, FINRA staff sent Hare a letter requiring him to provide information relevant to MS's complaint alleging unauthorized trading and other sales practice violations.⁵¹ In Hare's written response, dated June 12, 2009, he stated that he had spoken with MS and obtained her specific authorization for the trades that occurred in the LS Trust account before July 2007.⁵² Hare also stated that he had no involvement in the trades that were made in the LS Trust account in July and September 2007;⁵³ rather, one of his partners at Wells Fargo, either Mackenzie or Lofurno, was responsible for those trades.⁵⁴

On November 17, 2009, Hare appeared at an OTR.⁵⁵ During the OTR, Hare testified that he was not involved with any of the five trades that were effected in the LS Trust account from July through September 2007.⁵⁶ He also provided a detailed explanation of a meeting that took place after MS's complaint to Wells Fargo.⁵⁷ Hare testified that, during the meeting, Lofurno admitted to him and Mackenzie that Lofurno had initiated the trades in the LS Trust account that occurred after June 2007.⁵⁸

As a result of Hare's responses, the FINRA staff issued additional Rule 8210 requests to Wells Fargo, requesting, among other items, the following: (1) signed statements from MacKenzie and Lofurno for the specific trades that Hare denied

⁵¹ CX-17.

⁵² CX-17, at 1-2.

⁵³ In the Rule 8210 request letter, dated June 3, 2009, FINRA staff inadvertently failed to ask Hare about his involvement with the August 2007 trade in LS Trust account. CX-17, at 1-2. However, FINRA staff questioned Hare about the August 2007 trade during his OTR on November 17, 2009. CX-18.

⁵⁴ CX-17, at 2.

⁵⁵ CX-18.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

executing; (2) order tickets and order entry information for the trades at issue; and (3) information from Huber, Wells Fargo's compliance specialist, regarding his interview of Hare.⁵⁹ The FINRA staff also took OTRs of MacKenzie and Lofurno.⁶⁰

On June 25, 2009, MacKenzie and Lofurno provided a statement to FINRA.⁶¹ They emphasized that while they shared a joint representative code with Hare, they had no involvement with the LS Trust account.⁶² Lofurno explained that one of his responsibilities within the partnership was entering orders for syndicate transactions.⁶³ He emphasized that he entered syndicate orders for all of the representatives within the partnership.⁶⁴ Lofurno acknowledged that he entered orders in Wells Fargo's back office system for the two syndicate purchases in July and September 2007.⁶⁵ Specifically, of the five disputed trades, Lofurno stated that he entered the orders for Claymore/Guggenheim on July 26, 2007, and Aegon N V on September 14, 2007, after being directed to do so by Hare.⁶⁶

During the hearing, both MacKenzie and Lofurno again denied being involved in the transactions at issue other than the two syndicate purchases.⁶⁷ They also denied being

⁵⁹ CX-12, CX-13, CX-14.

⁶⁰ RX-3, RX-4.

⁶¹ CX-12, at 4-5.

⁶² CX-12, at 4.

⁶³ *Id.*; see Vol. 1, at 197-98.

⁶⁴ CX-12, at 4.

⁶⁵ *Id.*

⁶⁶ *Id.*; CX-14, at 30-31.

⁶⁷ Vol. 1, at 149, 207-09.

at any meeting where Lofurno allegedly admitted responsibility for the trades from July through September 2007.⁶⁸

Huber, Wells Fargo's compliance specialist, also provided a statement to FINRA on December 8, 2009.⁶⁹ Huber stated that responsibility for the LS Trust account rested with Hare.⁷⁰ According to Huber, when he interviewed Hare following the receipt of MS's oral complaint, Hare did not refer to anyone else entering orders for the LS Trust account.⁷¹ In addition, during the interview, Hare never raised any allegation of unauthorized trading in the LS Trust account by one of his partners.⁷²

On December 23, 2009, Wells Fargo provided order entry information and trade reports to FINRA for trades in the LS Trust account, including the five trades Hare had denied entering.⁷³ Wells Fargo reported that Hare's terminal identification number was L#4U.⁷⁴ The terminal identification number was unique to Hare and linked to his personal password.⁷⁵ While not all trades reflected Hare's terminal identification number as a result of multiple computer integrations, Wells Fargo provided supporting order entry information for several of the disputed trades, which reflected Hare's terminal identification number. Specifically, the following trades were tied to Hare's terminal identification: the sale of Dividend Capital on August 1, 2007, the purchase of First Trust on September 24, 2007, and the sale of Calamos Global Dynamic on September 24,

⁶⁸ Vol. 1, at 149-50, 209.

⁶⁹ CX-13.

⁷⁰ CX-13, at 2.

⁷¹ *Id.*

⁷² *Id.*

⁷³ CX-14.

⁷⁴ CX-14, at 3.

⁷⁵ Vol. 1, at 255.

2007.⁷⁶ Consistent with Lofurno's statement and testimony, Wells Fargo's records also reflected that Lofurno entered the purchase of the Aegon N V, an initial public offering, on September 14, 2007.⁷⁷

After careful consideration, the Hearing Panel concludes that the evidence supports a finding that Hare provided false and misleading information to FINRA. Other than the two syndicate transactions, both MacKenzie and Lofurno denied any involvement with the trades at issue, and the Panel found them to be credible. Indeed, the Wells Fargo order entry documentation corroborated Lofurno's statement and testimony as it reflected that Lofurno entered the order for the purchase of Aegon N V. The Wells Fargo order entry documentation also specifically linked Hare to the other three trades because each trade reflected Hare's terminal identification number. Accordingly, the Hearing Panel finds that Hare violated FINRA Rules 8210 and 2010, as described in the Second Cause of Action.⁷⁸

III. SANCTIONS

The FINRA Sanction Guidelines ("Guidelines") state that, absent mitigating circumstances, a bar should be standard for failing to respond truthfully to FINRA.⁷⁹ If there are mitigating factors present, adjudicators should consider suspending the individual in any or all capacities for up to two years.⁸⁰ The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles

⁷⁶ CX-14, at 27.

⁷⁷ CX-14, at 27.

⁷⁸ See *Hedge Fund Capital Partners*, 2012 FINRA Discip. LEXIS 42, at *64 (finding that a violation of Rule 8210 is also conduct inconsistent with just and equitable principles of trade under NASD Rule 2110).

⁷⁹ FINRA Sanction Guidelines, 33 (2011).

⁸⁰ *Id.*

applicable to all violations, the importance of the information requested as viewed from FINRA's perspective.⁸¹

Here, the information sought by FINRA related to serious allegations of misconduct by Hare: namely, MS's allegations of churning and unauthorized trading. This information was extremely important from FINRA's perspective because investor protection is at the heart of FINRA's mission.

Hare's false statements appear to have been intentional.⁸² The evidence reveals that Hare gave false information to FINRA in his written Rule 8210 response on June 12, 2009, and again during his OTR on November 17, 2009. At no time did Hare notify Enforcement of his false statements or accept responsibility for his misconduct.⁸³

Hare's false statements also obstructed and prolonged FINRA's investigation.⁸⁴ Indeed, Hare's false statements caused FINRA to seek information and testimony from MacKenzie and Lofurno, a statement from Huber, and additional information and documentation from Wells Fargo.

There are no mitigating factors present, and the Hearing Panel finds that Hare's false statements to FINRA were egregious. Anything short of a bar would be insufficient to remedy Hare's misconduct and to deter other respondents from engaging in future

⁸¹ *Id.*

⁸² *Id.* at 7 (Principal Consideration No. 13).

⁸³ *Id.* at 6 (Principal Consideration No. 2).

⁸⁴ *Id.* at 7 (Principal Consideration No. 12).

misconduct.⁸⁵ Accordingly, the Hearing Panel bars Hare in all capacities for his false statements to FINRA.

IV. ORDER

Jeremy D. Hare is barred from associating with any member in any capacity for providing false information and testimony to FINRA, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. In addition, he is ordered to pay costs in the amount of \$4,380.25, which includes a \$750 administrative fee and the cost of the hearing transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. If this decision becomes FINRA's final disciplinary action, the bar will take effect immediately.⁸⁶

Maureen A. Delaney
Hearing Officer
For the Hearing Panel

Copies to: Jeremy D. Hare (via electronic and first-class mail)
 David F. Newman, Sr., Esq. (via electronic and first-class mail)
 Mark P. Dauer, Esq. (via electronic mail)
 David R. Sonnenberg, Esq. (via electronic mail)

⁸⁵ See *Geoffrey Ortiz*, Exchange Act. Rel. No. 58416, 2008 SEC LEXIS 2401, at *32 (Aug. 22, 2008) (“Because of the risk of harm to investors and the markets posed by such misconduct, we conclude that the failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry.”).

⁸⁶ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.