

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGORY E. GOLDSTEIN
(CRD No. 2412387),

Respondent.

Expedited Proceeding
No. FPI120005

STAR No. 20110302101

Hearing Officer – LOM

HEARING PANEL DECISION

January 4, 2013

Respondent was served with a Notice of Suspension pursuant to FINRA Rule 9552 after he refused to answer questions during an on-the-record interview and refused to provide documents and information subsequently requested pursuant to FINRA Rule 8210. Respondent is found to have violated Rule 8210, and is ordered to comply fully with all outstanding FINRA Rule 8210 requests for information within 21 days of the date of this decision. If Respondent fails to comply within that time period, then pursuant to FINRA Rules 9552(a) and (d) he will be automatically suspended from association with any member firm in any capacity. Pursuant to FINRA Rules 9552(f) and (h), if the suspension is not terminated on the ground of full compliance within three months, Respondent will be automatically barred. If barred, then pursuant to FINRA Rules 9559(n) and 8310(a) he also will be fined \$50,000.

Appearances

Peter Schlossman, Senior Counsel, Jonathan I. Golomb, Senior Special Counsel, Rockville, Maryland, represent the Department of Enforcement.

Martin P. Unger, Ian J. Frimet, Burkhart Wexler & Hirschberg, LLP, Garden City, New York, represent Respondent.

I. INTRODUCTION

Respondent, Gregory Evan Goldstein (“Respondent” or “Goldstein”), requested a hearing pursuant to FINRA Rules 9552 and 9559 after the Department of Enforcement (“Enforcement”) of the Financial Industry Regulatory Authority (“FINRA”) served him with a Notice of

Suspension for failure to provide information and documents in connection with FINRA Rule 8210. Pursuant to Rule 9552(d), the suspension was automatically stayed.¹

Respondent refused to answer questions during an on-the-record interview (“OTR”) and refused to provide certain documents and information that Enforcement subsequently requested pursuant to FINRA Rule 8210. The inquiries Respondent refused to answer generally concern Respondent’s outside business activities conducted through an entity called Wall Street at Home.com, Inc. (“Wall Street at Home”). Respondent takes the position that he need not answer Enforcement’s inquiries pursuant to Rule 8210 to the extent they concern Wall Street at Home, because, he asserts, Wall Street at Home is an independent, unregulated third-party entity outside FINRA’s jurisdiction. On that basis, Respondent contends that he has not violated FINRA Rule 8210.

Because the critical facts are not in dispute, and the jurisdictional issue that is at the heart of Respondent’s defense is a legal issue, the parties agreed to a resolution of the matter on the basis of stipulated facts and legal briefs, rather than an evidentiary hearing.² A Hearing Panel composed of the Hearing Officer and two current members of the District 10 Committee

¹ FINRA is responsible for regulatory oversight of securities firms and associated persons who do business with the public. It was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange. FINRA is developing a new “Consolidated Rulebook” of FINRA Rules in which some NASD Rules have been replaced by new FINRA Rules. Other NASD Rules continue to be in effect. 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, FINRA’s procedural Rules apply. The conduct Rules that apply are those that existed at the time of the conduct at issue. FINRA and NASD Rules are available at www.finra.org/Rules (“FINRA Manual On-Line”). References here to FINRA include references to NASD.

² FINRA Rule 9552 and Rule 9559 provide for an expedited procedure because, generally, such cases are not complex. See Notice To Members 04-36 (expedited actions generally involve “straightforward issues” such as whether the respondent paid an arbitration award or fee or provided information requested by the staff). In this case, however, as discussed below, Respondent challenges the jurisdictional scope and fairness of FINRA Rule 8210 in a “test” case. The usual deadlines have been extended to allow for full briefing and consideration of the issues. Respondent has not objected.

reviewed the joint stipulations, and the opening, response, and reply briefs.³ The Hearing Panel concluded that neither oral argument nor evidentiary testimony was necessary. This is the Hearing Panel's decision.

Wall Street at Home is an indirect owner of a FINRA member firm, because it owns 100% of a holding company called Steven Gregory Securities ("SGS" or "Holding Company") that in turn owns 95% of a FINRA member firm called Marquis Financial Services, Inc. ("Marquis"). Respondent is the president and sole voting stockholder of Wall Street at Home, as well as the president of both Marquis and the Holding Company. Respondent also is the sole generator of revenue for Wall Street at Home (through largely unspecified business consulting that may be related to Respondent's securities business), and the sole person with access and control of Wall Street at Home's funds. He is identified as the sole control person of Wall Street at Home in documents filed with FINRA. He owns at least 80% of Wall Street at Home, while 30 or so other shareholders (whom Respondent refuses to identify) own a minority interest.

As more fully discussed below, the information sought by the staff pursuant to FINRA Rule 8210 is information that belongs to Goldstein, that is within his possession, custody and control, and that concerns his own business activities. That those activities are conducted through Wall Street at Home does not insulate Goldstein from responding to FINRA's inquiries. Furthermore, Goldstein's business activities through Wall Street at Home appear closely related to his conduct of a securities business through FINRA member firm Marquis. They are not

³ The Parties' filings are: (i) Notice of Filing of Stipulations ("Jt. Stip."); (ii) Request for Hearing Pursuant to FINRA Rules 9552 and 9559 ("Resp. Opening"), with Exhibits A through L ("Resp. Ex. A" *et seq.*); (iii) Enforcement's Response to Respondent's Request for a Hearing Pursuant to FINRA Rules 9552 and 9559 ("Enf."), with Exhibits 1 through 22 ("Enf. Ex. 1" *et seq.*); and (iv) Respondent's Reply Brief ("Resp. Reply"). The Hearing Panel has relied upon only those Exhibits that Goldstein could not dispute, *e.g.*, excerpts from Goldstein's OTR, offered by Enforcement (Enf. Ex. 2 and Enf. Ex. 10) and Goldstein (Resp. Ex. A); Goldstein's Form U4, offered by Enforcement (Enf. Ex. 15); Marquis's CRD, offered by Enforcement (Enf. Ex. 4); correspondence outlining the questions FINRA staff asked Goldstein pursuant to Rule 8210, offered by Goldstein (Resp. Ex. A) and Enforcement (Enf. Ex. 21).

unrelated business activities. Goldstein is required to provide the information pursuant to FINRA Rule 8210.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINRA Has Jurisdiction Over Goldstein And Marquis

Respondent, Gregory Evan Goldstein, entered the securities industry in 1995 and currently is registered through FINRA member firm Marquis, where he is the president.⁴ FINRA has jurisdiction over Goldstein pursuant to Article V of FINRA's By-Laws because he is within the definition of an associated person in Article I of the By-Laws. Indeed, he is an associated person for three independent reasons: (i) Respondent is an officer of Marquis; (ii) Respondent is engaged in the securities business and is indirectly a control person of Marquis; and (iii) Respondent is registered as an associated person of Marquis. Pursuant to FINRA's By-Laws, when Goldstein applied for registration he agreed on his Form U4 to abide by the securities laws and the rules, orders, and disciplinary decisions of the organization.⁵ FINRA similarly has jurisdiction over Marquis as a member firm pursuant to Article IV of the By-Laws.⁶

B. FINRA Also Has Jurisdiction Over The Holding Company For Purposes Of FINRA Rule 8210

In 1999 FINRA (through its predecessor, NASD) amended its By-Laws specifically to give "the staff the authority to require the provision of information and testimony under NASD

⁴ Jt. Stip. ¶¶ 1-2; Enf. Ex. 4 (Marquis CRD as of 4/16/2012).

⁵ FINRA By-Laws, Article I (Definitions), rr (a natural person who is registered with a FINRA member firm, and, regardless of registration, any natural person who serves as an officer of such a firm or any natural person engaged in the securities business who directly or indirectly controls the firm, are all persons associated with the member firm). FINRA By-Laws, Article V, Section 2(a)(1) (every person who applies for registration agrees to abide by the securities laws and FINRA Rules, orders and sanctions). FINRA By-Laws, Article V, Section 4 (FINRA retains jurisdiction over any associated person for purposes of investigation, disciplinary action, and obtaining information pursuant to FINRA Rule 8210 for two years after the person is no longer associated). Enf. Ex. 4 (Marquis CRD as of 4/16/2012, p. 5); Enf. Ex. 15 (Goldstein's Form U4).

⁶ FINRA By-Laws, Article I (Definitions), ee (member firm is any broker-dealer admitted to membership). FINRA By-Laws, Article IV, Section 1 (a member firm agrees to comply with FINRA Rules). FINRA By-Laws, Article IV, Section 6 (FINRA retains jurisdiction for two years after a firm ceases to be a member).

Rule 8210 from any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they ‘control’ the member firm or are actively engaged in its securities or investment banking business.” The amendments accomplished this purpose by including in the definition of the term associated person, for purposes of Rule 8210, any person listed on Schedule A of the firm’s Form BD. Any person who owns 5% or more of the voting shares of a FINRA member firm is required to be listed on Schedule A.⁷ Accordingly, since the Holding Company owns 95% of Marquis and is listed on the Form BD for Marquis as a direct owner of the brokerage firm, the Holding Company is subject to the obligation to provide information pursuant to Rule 8210.⁸

C. Goldstein Owns, Controls, And Conducts Business Through Each Entity, Including Marquis, SGS, And Wall Street At Home

Marquis. Goldstein started working at Marquis in June 2001,⁹ around the time that the Holding Company, SGS, signed an agreement to purchase Marquis.¹⁰ At the time of the

⁷ Schedule A of Form BD; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Definition of “Person Associated with a Member,” Fed. Reg. Vol. 64, No. 175, 64 FR 49261 (Sept. 10, 1999); Notice To Members 99-95, 1999 SEC LEXIS 2258 (Oct. 19, 1999).

⁸ Enf. Ex. 4 (Marquis CRD as of 4/16/2012, p. 5). See *Dep’t of Enforcement v. Keener*, Expedited Pro. No. FPI110005, No. 2001029820501 (OHO July 20, 2012) (unregistered person listed on BD Schedule A as direct owner of brokerage firm was subject to Rule 8210). See also *In the Matter of Justin William Keener (“Keener”)*, SEC Admin. Pro. No. 3-14988, Order Denying Stay, Slip Op. at 4-5 (SEC Sept. 20, 2012) (stating it is likely that FINRA had jurisdiction for purposes of Rule 8210 over unregistered person identified as owner of more than 5% of member firm on Schedule A of Form BD).

Direct owners of 5% or more are reported on Schedule A. Indirect owners of 25% or more are reported on Schedule B. The Form BD Instructions indicate that each successive 25% indirect owner shall be disclosed until a person or public reporting company is reached. Changes in ownership or reporting are made by filing and revising as necessary a Schedule C. Form BD Instructions; Notice To Members 92-61, 1992 NASD LEXIS 20 (Nov. 1992). As a 100% owner of the Holding Company, Wall Street at Home is an indirect owner of Marquis. In turn, as an 80% owner of Wall Street at Home, Goldstein is also an indirect owner of Marquis. See Enf. Ex. 4 (Marquis CRD as of 4/16/2012, p. 5).

⁹ Jt. Stip. ¶ 31.

¹⁰ Jt. Stip. ¶¶ 3-4.

purchase, Goldstein had a partner, Steven Cohen, but Cohen sold his interest to Goldstein in June or July 2006.¹¹

Marquis identifies Goldstein in its CRD as its president and as a control person. SGS, the Holding Company, is the only other control person.¹² Goldstein testified that Marquis employs one secretary and two other people in addition to himself, Art Kingsley Okun, the Chief Compliance Officer for Marquis, and Peter Salvato, an account representative.¹³ Goldstein supervises Okun and tracks who the customers are.¹⁴ The two of them work side by side in California, while Salvato works out of his house in Florida.¹⁵

Goldstein exercises control over Marquis and considers himself in charge of the firm. Goldstein testified at his OTR that he determined whether the brokerage firm had sufficient cash to afford to give him a bonus.¹⁶ It was Goldstein's sole decision to hire Okun as Chief Compliance Officer.¹⁷ In his OTR, Goldstein described himself as the only owner of Marquis, but when he was corrected by his attorney he acknowledged that SGS and Wall Street at Home are owners of Marquis.¹⁸

¹¹ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 24); Jt. Stip ¶¶ 7-8. SGS, Steven Gregory Securities, was an amalgam of the first names of the two partners. They had intended to change the name of Marquis to the holding company name but ended by leaving the name of the broker-dealer as Marquis. Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 25).

¹² Enf. Ex. 4 (Marquis CRD as of 04/16/2012, p. 5).

¹³ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 18, 22-23). Goldstein testified that his wife is also registered through the firm but is on leave. *Id.* at 18.

¹⁴ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 20-21).

¹⁵ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 20-22).

¹⁶ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 23-24).

¹⁷ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 31-32).

¹⁸ Enf. Ex. 2 (Goldsterin Jan. 9, 2012 OTR, pp. 24-25).

SGS. The Holding Company currently holds 95% of Marquis and is a direct owner of the FINRA member firm listed on Schedule A of the Marquis Form BD. The Holding Company has no other purpose than owning Marquis and has never engaged in any other business beyond owning Marquis.¹⁹ The Holding Company has never had any employees.²⁰ Goldstein is the president and sole officer of the Holding Company.²¹ Goldstein has described SGS as “[j]ust an empty holding company.”²²

Wall Street at Home. Wall Street at Home owns 100% of the Holding Company and is identified in the Marquis CRD as the owner and control person of the Holding Company. Wall Street at Home is an indirect owner of Marquis.²³

Goldstein is the owner and control person of Wall Street at Home, according to Marquis’s CRD.²⁴ The CRD identifies no other owners of Wall Street at Home.²⁵ In his OTR, Goldstein testified that there are other part owners of Wall Street at Home,²⁶ but Goldstein owns at least 80% of Wall Street at Home.²⁷ The minority shareholders bought shares in Wall Street at Home in private placements.²⁸ Marquis acted as the placement agent for Wall Street at Home in a July 2003 private placement offering.²⁹ The plan was for Wall Street at Home to operate a

¹⁹ Jt. Stip. ¶¶ 4-5.

²⁰ Jt. Stip. ¶ 9.

²¹ Jt. Stip. ¶ 9.

²² Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 25).

²³ Jt. Stip. ¶ 6; Enf. Ex. 4 (Marquis CRD as of 04/16/2012, p. 5).

²⁴ Enf. Ex. 4 (Marquis CRD as of 04/16/2012, p. 5).

²⁵ *Id.*

²⁶ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 28-29).

²⁷ *Id.*; Resp. Reply pp. 4, 6.

²⁸ Jt. Stip. ¶ 7.

²⁹ Jt. Stip. ¶¶ 15-16.

retail securities brokerage business through Marquis.³⁰ The Private Placement Memorandum for the offering of Wall Street at Home described SGS and Marquis both as wholly owned subsidiaries of Wall Street at Home, and stated that they together operated a full service, retail securities brokerage business through Marquis.³¹ Marquis raised about \$1,000,000 in the July 2003 private offering of Wall Street at Home through the sale of units to approximately 20-30 investors, including Marquis's customers.³²

Goldstein has conducted outside business activities through Wall Street at Home from at least 2005 through the present.³³ Wall Street at Home has never had any employees, and has never had any income except for revenues generated by Goldstein in connection with consulting services he provides clients through Wall Street at Home. As a business consultant for Wall Street at Home, Goldstein reviews corporate structures and performs corporate due diligence and other types of work for clients.³⁴ He testified that his career in the securities industry prepared him for doing such work.³⁵

Goldstein testified that he does not receive compensation directly from customers of Wall Street at Home for the consulting work he performs. Rather, customers pay Wall Street at Home. Then Goldstein uses the funds as he sees fit. With respect to fees paid to Wall Street at Home, he said, "I collect the money, and I use it when it is necessary."³⁶

³⁰ Jt. Stip. ¶ 17. Goldstein once described the purpose of Wall Street at Home as "an entity that owns the broker/dealer [Marquis]." Enf. Ex. 10 (Goldstein Oct. 23, 2007 investigative testimony p. 34).

³¹ Enf. Ex. 7 (July 7, 2003 PPM for Wall Street at Home offering p. 1).

³² Jt. Stip. ¶ 20. Marquis has been the subject of disciplinary action for its conduct in connection with two private placement offerings in 2003 through 2005. Enf. Ex. 4 (Marquis CRD as of 04/16/2012, pp. 11-13).

³³ Jt. Stip. ¶ 30. Goldstein's stipulation and January 9, 2012 OTR both establish that Goldstein engaged in some kind of consulting business through Wall Street at Home.

³⁴ Jt. Stip. ¶¶ 10-13.

³⁵ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 256).

³⁶ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 257).

In sum, Goldstein is the only voting shareholder of Wall Street at Home,³⁷ the only officer of Wall Street at Home,³⁸ the only person generating revenues for Wall Street at Home, and the only person with access to Wall Street at Home's funds. Goldstein uses those funds to pay Wall Street at Home bills and expenses, such as travel expenses. Goldstein also takes distributions of funds from Wall Street at Home for services he performs on behalf of Wall Street at Home.³⁹

D. FINRA Rule 8210 Requires A Person Who Is Subject To FINRA's Jurisdiction To Provide Information Or Testimony Upon Request And Is A Critical Investigatory Tool

FINRA Rule 8210(a)(1) provides in relevant part that FINRA staff "shall have the right" to require a member, associated person, or other person subject to FINRA's jurisdiction "to provide information orally, in writing, or electronically" or to testify under oath or affirmation "with respect to any matter involved in the investigation, examination, complaint, or proceeding." Rule 8210(a)(2) provides that FINRA staff shall have the right to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation." The Rule applies to anyone subject to FINRA's jurisdiction, including members and associated persons but also those indirect owners of members who are specifically required to comply with Rule 8210.

FINRA Rule 8210(c) requires compliance with any Rule 8210 request. Rule 8210(c) prohibits any member or person from failing to provide information or testimony or access to books, records, or accounts pursuant to a Rule 8210 inquiry. This provision contains no exceptions. The Securities and Exchange Commission ("SEC") describes the Rule as

³⁷ Jt. Stip. ¶ 10.

³⁸ *Id.*

³⁹ Jt. Stip. ¶ 14.

“‘unequivocal’ with respect to an associated person’s obligation to cooperate with NASD [and its successor, FINRA’s] information requests.”⁴⁰

Rule 8210 enables FINRA to conduct meaningful examinations and investigations in order to detect misconduct and protect the public interest. FINRA relies heavily on Rule 8210, and the SEC has “repeatedly stressed the importance of cooperation in NASD investigations ... [and] emphasized that the failure to provide information undermines NASD’s ability to carry out its self-regulatory functions.”⁴¹ Indeed, Rule 8210 is widely accepted as FINRA’s most important tool for investigating potential wrongdoing primarily because FINRA lacks subpoena authority and has limited power to compel the production of evidence from its members.⁴² A failure to provide information requested pursuant to Rule 8210 is regarded as “a serious violation because it subverts NASD’s [and FINRA’s] ability to execute its regulatory responsibilities.”⁴³ FINRA is therefore entitled to the “full and prompt cooperation” of all persons subject to its jurisdiction when investigative requests are made by members of its staff.⁴⁴

E. Enforcement Requested Information From Goldstein, A Person Subject To FINRA’s Jurisdiction, Pursuant To Rule 8210

Enforcement began investigating Marquis and its employees, including Goldstein, in 2010 after receiving a referral from FINRA Member Regulation concerning suspicious trading in penny stock at the firm in 2008 and 2009 by insiders of the issuer. FINRA staff is investigating for outside business activities, selling away, buying away, spinning, front-running, market

⁴⁰ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

⁴¹ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (internal citations omitted).

⁴² *See John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at *57 n.67 (Nov. 12, 2010), *appeal docketed*, No. 10-15918 (11th Cir. Dec. 23, 2010).

⁴³ *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *20-21 (Sept. 10, 2010) (“Without subpoena power, NASD must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate.”).

⁴⁴ *Michael David Borth*, Exchange Act Rel. No. 31602, 1992 SEC LEXIS 3248, at *7 (Dec. 16, 1992).

manipulation, violation of AML rules, fraud, and other potential conflicts between Marquis and Goldstein and the customers of Marquis.⁴⁵

It became apparent that Goldstein had previously failed to report (and affirmatively denied having) outside business activities in connection with Wall Street at Home, contrary to FINRA requirements and Marquis's own written procedures. In August 2011, Goldstein finally reported his outside business activities through Wall Street at Home.⁴⁶ It also became apparent that during the 2010-2011 period Goldstein had in addition failed to disclose (and affirmatively denied having) an outside brokerage account away from Marquis. In fact, Goldstein held an outside brokerage account at UBS Financial Services, Inc. ("UBS") during some or all of 2008 through 2011. The UBS account mainly contained two penny stocks in which Marquis was

⁴⁵ Enf. Ex. 1 (Declaration of FINRA Case Manager Sean Fitzpatrick) ¶¶ 6-7.

⁴⁶ FINRA Rule 3270 provides that no registered person may be an employee or officer of another entity or be compensated by another person or entity for business activity outside the scope of the registered person's relationship with the FINRA member firm without providing prior written notice to the member in whatever form the member specifies. Supplementary material to Rule 3270 in the FINRA Manual On-Line explains that the member must evaluate the activity to determine whether it is properly characterized as outside business activity or outside securities activity, in which case it will be subject to separate requirements. A member is required to keep a record of its compliance with these obligations in connection with each such written notice it receives.

Marquis had written procedures requiring any registered representative who received compensation for outside business activities to provide notice and a description of the outside "affiliation." Jt. Stip. ¶ 32. The brokerage firm's rules required the compliance officer to inquire about outside activities both upon employment and annually thereafter. The firm's rules also required the compliance officer to take action as necessary, including amending the registered individual's Form U4. Enf. Ex. 16 p. 5-9 (Marquis Written Supervisory Procedures, Outside Business Activities).

Prior to August 2011, Goldstein's Form U4 did not reflect his outside business activities at Wall Street at Home. Jt. Stip. ¶ 31. Furthermore, prior to August 2011, Goldstein affirmatively denied engaging in any outside business activities away from Marquis. On March 3, 2010, Goldstein signed his Marquis Annual Written Attestation in which he stated that he was not currently engaged in any outside business activity. Jt. Stip. ¶ 34. On May 28, 2010, Goldstein e-mailed a FINRA examiner to confirm a statement he had made earlier that day "that I do not have any outside business activities." Jt. Stip. ¶ 35. On March 29, 2011, Goldstein stated in his Marquis Annual Written Attestation that he was not engaged in any outside business activity. Jt. Stip. ¶ 36.

Goldstein explained in his 2012 OTR that he did not think he needed to report his outside business activities since he was the owner of Marquis, and it was only after FINRA staff told him he was required to make the disclosure that he updated his Form U4. He said, "For my outside business activity as Wall Street at Home. I just figured I was the owner, you know, the firm – president of the firm. And I knew what I was doing. So I didn't think I had to do it, but FINRA said I did. So I have since updated it the second they told me to do that." Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 255).

executing trades.⁴⁷ Many of Marquis's customers had most of their portfolios in one or two penny stocks.⁴⁸ Wall Street at Home also held an outside brokerage account,⁴⁹ which, as noted below, the staff inquired about, but Goldstein refused to provide any information.

The staff took Goldstein's testimony pursuant to FINRA Rule 8210 on January 9, 2012. In that OTR the staff asked Goldstein questions about his activities in connection with Wall Street at Home. Goldstein refused to answer certain of these questions.⁵⁰ Afterward, the staff sent Goldstein a written request for information and documents pursuant to Rule 8210. Those inquiries related to Goldstein's activities at Wall Street at Home.⁵¹ Through counsel, Goldstein declined to provide responsive information or documents, asserting that the requests exceed FINRA's authority.⁵²

F. Goldstein Refused To Provide Information Relating To His Business Activities Through Wall Street At Home

(1) Goldstein's Refusal To Answer Questions At His 2012 OTR

When Goldstein testified in the investigation pursuant to FINRA Rule 8210, the staff asked questions relating to his business activities through Wall Street at Home. Goldstein testified that he did consulting work on behalf of Wall Street at Home, conducting "due

⁴⁷ Goldstein stated in his 2010 and 2011 Marquis Annual Written Attestations that he did not hold (and had not held) an outside brokerage account. Goldstein failed to disclose his UBS account despite having acknowledged in his January 2010 Marquis Annual Investment Executive Compliance Agreement that he was obligated to report any outside brokerage accounts he held. At the end of January 2010, the assets in Goldstein's UBS account were valued at \$146,736.31, but their value declined, and by March 30, 2012, the assets were valued close to \$7,000. The vast majority of the holdings in the account consisted of two penny stocks in which Marquis was executing trades during 2009 and 2010. Jt. Stip. ¶¶ 37-41. Goldstein disclosed his UBS account eventually as a result of a FINRA audit. Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 266-67).

⁴⁸ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 181, 183).

⁴⁹ Jt. Stip. ¶ 43.

⁵⁰ Enf. Ex. 1 (Declaration of FINRA Case Manager Sean Fitzpatrick) ¶¶ 8-9.

⁵¹ Resp. Ex. B (Enforcement letter to Respondent's counsel dated February 3, 2012).

⁵² Resp. Ex. C (Counsel's letter dated February 16, 2012, to Sean Fitzpatrick).

diligence” to see whether companies were “viable.”⁵³ He said that his work in the securities industry had equipped him to do such consulting.⁵⁴ He also testified that the customers paid a fee to Wall Street at Home and that he would later use those funds as necessary.⁵⁵ Among other things, Goldstein used these funds for travel expenses,⁵⁶ which he would incur when he would “travel with companies to do due diligence.”⁵⁷ Goldstein testified that there were other owners of Wall Street at Home in addition to himself but said that they “would be very small minority owners.”⁵⁸

Goldstein declined, however, to identify any customer for whom he did such consulting work or even to specify an industry in which he had provided such consulting.⁵⁹ He also declined to identify any of the other shareholders in Wall Street at Home.⁶⁰ Goldstein further declined to say whether Wall Street at Home had any investment accounts.⁶¹ Goldstein declared, “I think that, you know, just the way you are asking questions about it is private business and so on. Taken just – it is difficult for me to answer questions about Wall Street because it is just not something I’m comfortable answering questions about.”⁶²

⁵³ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 255-56).

⁵⁴ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 256).

⁵⁵ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 257).

⁵⁶ Jt. Stip. ¶ 14.

⁵⁷ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 256).

⁵⁸ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 28-29).

⁵⁹ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 26-28, 256-57 (“Q: And what types of companies do you advise? Are they in different types of industries? A: Different kind of industries. Q: What industries. A: Various. Q: Tell us the industries. A: It could be anything. Real estate, Internet, products.”)).

⁶⁰ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 28-29).

⁶¹ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 267-69); Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 273).

⁶² Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 267).

Goldstein's attorney directed him not to provide information with respect to Wall Street at Home.⁶³ The attorney argued that questions regarding Wall Street at Home were outside FINRA's authority.⁶⁴ At one point the attorney declared, "I have said I think it is outside of your authority. And he is not going to answer.... Show us why we are wrong, and we will consider giving you a response.... I don't think you are authorized. But if you can show me that you have the authority to delve into Wall Street at Home, [the witness] will consider answering the questions."⁶⁵

Goldstein's responses to the staff's questions support Enforcement's assertion in its briefing that "Goldstein has frequently demonstrated a lack of candor and been evasive and uncooperative."⁶⁶ It is undisputed that Goldstein failed to report his outside business activities and his own outside brokerage account until they came to light due to FINRA's regulatory efforts. In answer to questions, Goldstein repeatedly responded that he did not know or could not remember information, even when that statement was not credible. When Goldstein was asked, for example, whether he or Wall Street at Home ever had any outside brokerage accounts, he responded, "I'm not sure. I can't recall."⁶⁷ When Goldstein was asked to identify the customers for Wall Street at Home consulting services, he responded, "Various companies."

⁶³ Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, pp. 27-28); Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, pp. 27-28, 268-69).

⁶⁴ *Id.*

⁶⁵ Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 273).

⁶⁶ Enf. p. 12.

⁶⁷ Enf. Ex. 2 (Goldstein Jan. 9, 2012 OTR, p. 267).

When asked to give the names of *any* of the top customers, Goldstein said, “No.”⁶⁸ Goldstein’s lawyer explained that he believed it was “private business” that was “just beyond [FINRA’s] authority.”⁶⁹

(2) Goldstein’s Refusal To Provide Responses To Written Requests For Information

After Goldstein refused to answer questions at his January 9, 2012 OTR, Enforcement staff reviewed the objections raised by Goldstein and his attorney and then sent the attorney a letter dated February 3, 2012, disputing the claimed basis for refusing to answer. The staff also enclosed written requests for information pursuant to Rule 8210 that were numbered 35 through 42 (following the numbering in an earlier request).⁷⁰ As paraphrased and summarized, those requests asked Goldstein to:

35. Identify the owners of Wall Street at Home from June 1, 2008, through December 31, 2011 (the “relevant period”);
36. Identify the customers to whom Goldstein provided services as Wall Street at Home for the relevant period;
37. Describe the business services provided to the customers identified in response to item 36;
38. Provide information and documents showing the compensation received by Wall Street at Home and/or Goldstein in connection with the services he provided through Wall Street at Home to the previously identified customers;

⁶⁸ Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 27).

Enforcement also pointed out that Goldstein was evasive in earlier OTR in 2007. Enf. pp. 12-13; Enf. Ex. 10 (compilation of Goldstein Oct. 23, 2007 OTR). For example, in the October 2007 OTR, Goldstein was asked about the private placement offering for Wall Street at Home, which Marquis offered and sold. He testified that Marquis customers invested in Wall Street at Home, but that he did not know how many or whether anyone other than Marquis customers invested in Wall Street at Home. He further testified that about 30 investors purchased an interest in Wall Street at Home, but he was “not sure” whether there was any list or other record of investors or whether investors had ever received any dividends (compilation of Goldstein Oct. 23, 2007 OTR, pp. 37-38). Goldstein variously answered “I don’t know,” “I am not sure,” and “I couldn’t be certain” throughout his 2007 OTR (compilation of Goldstein Oct. 23, 2007 OTR). Although this conduct does not bear on the question of whether Goldstein violated Rule 8210 in his 2012 OTR, it does bear on the sanctions, as discussed below.

⁶⁹ Resp. Ex. A (Goldstein Jan. 9, 2012 OTR, p. 27).

⁷⁰ Resp. Ex. B (Enforcement letter to Respondent’s counsel dated February 3, 2012); Jt. Stip. ¶ 46.

39. Identify every person who initiated, reviewed, and/or authorized any financial transaction for Wall Street at Home – including distributions to owners – during the relevant period;
40. Identify bank and brokerage accounts in which Wall Street at Home had a beneficial ownership interest during the relevant period;
41. Provide monthly statements for each account identified in response to item 40; and
42. Provide federal and state tax income tax returns for Wall Street at Home for the tax years 2008, 2009, and 2010.

On February 16, 2012, by letter signed by counsel, Goldstein refused to respond to the staff's written requests.⁷¹ That letter asserted that FINRA does not have authority to require a member or associated person "to produce documents belonging to a third party, particularly those unrelated to the member and/or associated person[']s securities activities (as here)."⁷²

G. Goldstein Argues That FINRA Lacks Jurisdiction Over Wall Street At Home

Respondent's opening brief summarizes the main basis for his refusal to answer questions at his OTR and his refusal to provide information pursuant to the subsequent written inquiries. According to Respondent: "FINRA Rule 8210 does not extend to a non-member, indirect owner, of a FINRA member broker/dealer, nor does it extend to the provision of information and/or production of documents of such third-party even if an officer of the third-party non-member is also an associated person."⁷³ The premise of the defense is that FINRA's staff is seeking information and documents belonging to a non-member, non-associated third party, rather than information belonging to and held by a regulated person about matters intertwined with his

⁷¹ Resp. Ex. C (Counsel's letter dated February 16, 2012, to Sean Fitzpatrick); Jt. Stip. ¶ 47.

⁷² *Id.*

⁷³ Resp. Reply p. 1.

securities business.⁷⁴ In his reply brief, Respondent criticizes Enforcement for allegedly ignoring “the major issue in this proceeding – the scope of Rule 8210.”⁷⁵ Respondent also criticizes FINRA for allegedly failing to better define the limits of Rule 8210.⁷⁶ Generally, Goldstein portrays this as a kind of test case for establishing the outer boundaries of Rule 8210.

H. FINRA Has Jurisdiction To Seek Information Regarding Goldstein’s Own Business Activities, Even If Those Activities Are Conducted Through Wall Street At Home

Whatever the limits of FINRA Rule 8210, this case is not even close to those limits.

Without a doubt, FINRA has jurisdiction here.

FINRA’s staff is not seeking information of an unrelated third party but, rather, information of *an associated person*, Respondent Gregory Goldstein. The information concerns Goldstein’s own business activities – Goldstein is the only person who works under the Wall Street at Home name and is the only person generating revenues for that entity. Goldstein owns the information – he is by far the majority owner of Wall Street at Home and, indeed, the only voting shareholder. Goldstein possesses and controls the information – he is identified in Marquis’s CRD as the control person of Wall Street at Home, he is the only officer of the company, and he is the only person who has access and control of Wall Street at Home funds and accounts.

⁷⁴ Respondent’s opening brief attempts to raise a number of issues regarding the scope of FINRA’s jurisdiction pursuant to Rule 8210. Resp. Opening pp. 2-3 (setting forth eleven issues Respondent believes should be decided). For example, Respondent asks “[W]hat are the limits of FINRA Rule 8210; and do the documents and information requested at bar fall within such limits?” *Id.* (Issue 3). Respondent also asks whether Rule 8210 is unconscionably vague. *Id.* (Issue 5). Many of these issues are based on the faulty premise, discussed below, that the information sought is not Goldstein’s information but, rather, some independent third party’s information. Other issues simply lack any grounding in fact or law or do not come into play given the facts of this case. To the extent any of these issues merits even a modicum of attention, they are addressed below.

⁷⁵ Resp. Opening p. 1.

⁷⁶ *Id.*

Furthermore, the entity Wall Street at Home is not entirely independent from the firm through which Goldstein conducts a regulated securities business. Wall Street at Home is an indirect owner and control person of FINRA member firm Marquis. Although not listed on Schedule A of Marquis's Form BD, Wall Street at Home is practically a direct owner of Marquis, because it owns 100% of a shell company that owns 95% of Marquis. In fact, Wall Street at Home was created to own and operate FINRA member firm Marquis, and it is under common control with Marquis and its Holding Company – Goldstein's control.

The businesses Goldstein owns and controls are also intertwined in other ways. Marquis conducted the private placement in which minority shareholders invested in Wall Street at Home, and Marquis customers are minority shareholders of Wall Street at Home. Goldstein's business and financial affairs operated through Wall Street at Home have a direct relationship to his customers in his securities business.

Finally, the information sought from Goldstein regarding his business through Wall Street at Home concerns activities closely related to his securities business through Marquis. Goldstein testified that it was his experience in the securities industry that made it possible for him to provide the consulting services he performs under the name Wall Street at Home. Even

the name of the entity signifies a close connection to the securities business.⁷⁷

I. None Of Respondent's Arguments To The Contrary Has Merit

(1) Ochanpaugh Is Entirely Different From This Case

Respondent mainly relies on the SEC's decision in *Ochanpaugh* to justify his refusal to provide the information requested pursuant to FINRA Rule 8210.⁷⁸ That reliance is misplaced. The case at hand is nothing like *Ochanpaugh*.

In *Ochanpaugh* a registered representative failed to comply with a Rule 8210 request for copies of three checks drawn on the account of a church with which he was affiliated. The staff of FINRA's predecessor (NASD) sought the checks as part of an investigation into whether Ochanpaugh had received compensation in connection with a discontinued bill-payment program that the church had operated for a short time. The church would not release the three checks in

⁷⁷ Enforcement argues that jurisdiction exists because Goldstein, Wall Street at Home, and SGS are alter egos. Enf. pp. 17-19. According to Enforcement the basic rule is that an entity and individual are alter egos if there is: (i) such a unity of interest that the separation of corporation and individual no longer exists; and (ii) it would be inequitable to give effect to the corporate form. Enforcement maintains that a host of considerations are relevant to the analysis, including whether there has been disregard of the legal formalities and a failure to maintain arm's length relationships among related entities.

The alter ego theory is used most often to pierce the corporate veil and hold individual owners liable for violations of law or tortious acts of a corporate entity. Different jurisdictions employ different standards for applying the alter ego theory, but generally the standard for holding that a corporation is the alter ego of a shareholder and ignoring the corporate form is a high one. It is not merely common ownership and control. See *In re Jay Alan Ochanpaugh*, Exchange Act Rel. No. 54363, 2006 SEC LEXIS 1926, at *14-15 and n.17 (Aug. 25, 2006). Numerous courts have held that the corporate veil will only be pierced on an alter ego theory in unusual circumstances that call for looking beyond the corporate structure. See, e.g., *SEC v. Woolf*, 835 F. Supp. 2d 111 (E.D. Va. Dec. 13, 2011) (SEC claims based on alter ego theory dismissed) (citing cases); *Valdez v. Capital Management Services LP*, 2010 U.S. Dist. LEXIS 121483 (S.D. Tex. Nov. 16, 2010) (100% commonality of ownership and identity of directors and officers still insufficient for alter ego theory); *In re Western States Wholesale Natural Gas Antitrust Litigation*, 2009 U.S. Dist. LEXIS 13818 (D. Nev. Feb. 23, 2009) (no personal jurisdiction based on alter ego theory where no evidence parent company failed to maintain corporate formalities).

The Hearing Panel's conclusion that FINRA has jurisdiction to request information from Goldstein regarding his business activities through Wall Street at Home does not turn on whether Wall Street at Home is the alter ego of Goldstein or any of the other entities over which FINRA has jurisdiction, or vice versa. Such a high standard is not required for Rule 8210 to apply and no court or administrative body has held that it is. FINRA does not have to show that Goldstein disregarded any corporate formalities in operating Wall Street at Home in order to require Goldstein to provide the information requested from him pursuant to Rule 8210.

⁷⁸ *Ochanpaugh*, 2006 SEC LEXIS 1926. Resp. Opening pp. 6-9, and Resp. Ex. E. Respondent says that *Ochanpaugh* is the only SEC decision on point. Resp. Opening p. 8.

issue out of concern for its members' privacy, although it did provide information about the purpose of the checks to address regulatory concerns. The church explained that the checks were written to members in financial need. The church elders authorized the registered representative to provide other requested information, including a description of the church and its activities and other financial information and bank records. The evidence showed that the registered representative could not by himself produce the requested checks. He needed authorization by other church leaders. The SEC concluded that NASD had not established that the registered representative had possession and control of the checks drawn on the church's account, and therefore the SEC held that the finding of a violation of Rule 8210 should be set aside.

In contrast, Goldstein is the only person who has access to and control of the funds, books, records, and accounts of Wall Street at Home. He needs no authorization from someone else to produce the requested information. Nor does the production of the requested information raise any confidentiality or privacy concerns. Goldstein has presented no evidence that identifying the customers and shareholders of Wall Street at Home or providing financial information for the company would invade the rights of any person relating to confidentiality or privacy.

In further contrast, the Rule 8210 inquiries here concern business conduct of an associated person acting through a company that has indirect ownership through a shell corporation of a FINRA member firm. Those business activities appear closely related to the regulated securities business of the associated person and the member firm, since they involve due diligence and analysis of the viability of companies and consulting activities that Goldstein says he is competent to perform because of his experience in the securities industry. The

information sought in *Ochanpaugh* was information that independent persons (elders of the church) informed NASD staff related to non-business, charitable payments.⁷⁹

In sum, in *Ochanpaugh* the information sought did not belong to the regulated person from whom it was sought and was not in his custody or control. Moreover, the information related to the church's charitable work, not the registered representative's business activities. Here the information belongs to Goldstein, is in his custody and control, and relates to his business activities, including his securities business with Marquis.⁸⁰

(2) Respondent's Other Arguments Are Also Unsound

As noted above, FINRA Rule 8210 requires compliance, without exception. FINRA's staff does not have to justify requests made pursuant to Rule 8210; and FINRA members and their associated persons "cannot take it upon themselves to determine whether information requested is material to an NASD investigation of their conduct."⁸¹ Accordingly, Respondent's complaint that FINRA's staff "provided no basis for its request" for the information and has not

⁷⁹ *Id.* In *Ochanpaugh*, the SEC did not determine that possession and control would suffice to establish FINRA's jurisdiction, because it was unnecessary to reach the question. The record failed to establish actual possession and control. For a different reason, the Hearing Panel here also does not determine whether possession and control would be enough without more to establish jurisdiction for purposes of Rule 8210. In this case, as discussed above, the record not only establishes possession and control but also much more.

Respondent raises the fact that FINRA proposed, but never adopted, a rule change adding possession, custody or control to Rule 8210 as a basis for obtaining information. Resp. Opening pp. 10-12. The proposed amendment is irrelevant to this case because Goldstein's possession and control of the information sought is only one of the factors supporting jurisdiction here.

⁸⁰ Moreover, the level of cooperation in *Ochanpaugh* was much different than in this case. The registered representative in *Ochanpaugh* and the church provided substantial amounts of information and only withheld three checks, while Goldstein here has refused to provide any information regarding his consulting services and customers or the compensation he has received for those services through Wall Street at Home. Nor has he identified any of the minority shareholders of Wall Street at Home. The Hearing Panel finds that Goldstein's lack of cooperation does not demonstrate a potentially legitimate, narrow challenge to FINRA's jurisdiction but rather an attempt to evade regulatory supervision and accountability.

⁸¹ *Dep't of Enforcement v. Harvest Capital Investments, LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *34 (NAC Oct. 6, 2008) (citation omitted).

“in any way explained how that information or those documents are material to its investigation or examination” of Marquis and Goldstein⁸² is not relevant.

Respondent also argues that FINRA’s staff is seeking private and confidential information of third parties to which FINRA is not entitled. He refers to the names of the owners of Wall Street at Home and its clients, as well as the identification of the brokerage and bank accounts of Wall Street at Home.⁸³ Respondent has cited no authority for withholding such information and no basis for considering it private or confidential.

Respondent argues that Rule 8210 is unconscionably vague, unfair, and should not be enforced until it is fixed. Much of this attack is focused on the language in the Rule that requires compliance if the information sought concerns “any matter involved” in the investigation. Respondent also raises alleged procedural unfairness in the appellate process for disciplinary proceedings.⁸⁴ The Hearing Panel’s purpose in this case is to determine whether Goldstein violated the Rule, and the Hearing Panel can accomplish its purpose without addressing any of Goldstein’s general substantive and procedural attacks on the Rule. There is nothing unfair about the application of Rule 8210 to Goldstein in the facts and circumstances of this case.

III. SANCTIONS

Enforcement asks that the Hearing Panel order Goldstein to comply fully and completely with all outstanding requests for information and documents, as described in the Rule 9552 Notice of Suspension within two weeks of the Hearing Panel’s written decision, suspend Goldstein for 30 days in all capacities, and fine him \$20,000. If Goldstein does not comply with

⁸² Resp. Opening p. 7.

⁸³ Resp. Opening pp. 12-13.

⁸⁴ Resp. Opening pp. 14-19.

that order, Enforcement urges the Panel to bar Goldstein from the industry for failing to comply with FINRA Rule 8210 pursuant to FINRA Rules 9559(n)(1) and 8310(a).⁸⁵

Proceedings under Rule 9552 are primarily focused on obtaining compliance with information requests (and on keeping reported information current). Even if a member or associated person has not provided information that it should have pursuant to Rule 8210, Rule 9552(a) essentially creates a 21-day window in which to take corrective action before the violator will be suspended. Rule 9552(a) authorizes the issuance of a Notice of Suspension but stays the suspension itself for a period of 21 days. Under Rules 9552(a) and (d), the suspension only becomes effective if the violator does not take steps to comply within the 21-day period. Under Rule 9552(f), even after a suspension has been imposed, it may be terminated if corrective action is taken and full compliance is obtained. Under Rule 9552(h), however, if compliance is not obtained within three months of the suspension, then a bar is automatic. When viewed together, these provisions place an emphasis on securing compliance in order to assist FINRA to perform its investigatory and enforcement functions.

Rule 9559(n), however, does allow the Hearing Panel to approve, modify, or withdraw any sanctions or requirements imposed by a Notice of Suspension and to impose any other fitting sanctions pursuant to Rule 8310(a). Rule 8310(a) authorizes various sanctions against any member or associated person who violates the law or FINRA's Rules or who refuses to comply with an order or decision issued under FINRA's Rules. The authorized sanctions include fines, suspensions, and bars.

The Hearing Panel believes that any sanction here should be focused on securing compliance with the Rule 8210 inquiries in order to facilitate Enforcement's investigation. A

⁸⁵ Enf. pp. 2-3.

fine and suspension imposed in advance, as Enforcement requests, regardless of whether Respondent might fully comply with the Hearing Panel's order to provide the information within two weeks, would to some extent discourage compliance by making full compliance seem futile. Therefore, the Hearing Panel believes sanctions should be imposed here only after Respondent has an opportunity to comply but fails to do so.

If Respondent fails to comply after being directed to do so by the Hearing Panel's decision, however, the most severe sanctions would be warranted. Such defiance of the Rules and this decision would be a serious violation.

The FINRA Sanction Guidelines ("Sanction Guidelines") state that a bar should be the standard sanction where an individual does not respond in any manner to a request for information pursuant to Rule 8210, and that a fine may be imposed of \$25,000 to \$50,000.⁸⁶ Even where an individual provides a partial but incomplete response, a bar is standard unless the person can demonstrate that he or she substantially complied with the information requests. In addition, a fine may be imposed of \$10,000 to \$50,000. The burden is on the respondent to show substantial compliance.⁸⁷

Among the principal considerations in determining sanctions for this type of violation is the importance of the information requested but not provided, as viewed from FINRA's perspective. Another principal consideration is the degree of regulatory pressure required to obtain the information.⁸⁸

In every case, a principal consideration in determining the appropriate sanction for an individual is whether the person engaged in an intentional act (as opposed to a reckless or

⁸⁶ FINRA Sanction Guidelines (2011) p. 33, available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

⁸⁷ Sanction Guidelines p. 33.

⁸⁸ Sanction Guidelines p. 33.

negligent act).⁸⁹ In particular, a principal consideration is whether the respondent concealed information from FINRA or attempted to deceive or mislead in testimony.⁹⁰

As explained in the General Principles applicable to all FINRA sanctions, the overall purpose of the FINRA disciplinary process and FINRA sanctions is to deter the respondent and others from engaging in misconduct, improve business conduct in the securities industry, and protect investors. Any sanction should be significant enough to achieve these goals.⁹¹

As applied in this case, if Respondent fails to comply fully with the Rule 8210 inquiries, these Principles and considerations support the imposition of a bar and a \$50,000 fine.

First, a bar is standard unless substantial compliance is demonstrated. Goldstein has not come close to substantial compliance. His refusal to provide information regarding Wall Street at Home in fact may be regarded more reasonably as a complete refusal to provide information regarding his customers, consulting services, and compensation for those services, along with information regarding the other shareholders of Wall Street at Home and any trading in the penny stocks in which Marquis customers and Goldstein were heavily invested.

Second, the information Goldstein is withholding is critical to an investigation of potential fraud and conflicts with Marquis's customers. Unknown Marquis customers purchased minority interests in Wall Street at Home. Without the requested information, it is impossible to know whether they have been accorded their rights as shareholders and whether they have received dividends or any return on their investment. It is also impossible to know whether Goldstein generated revenues from consulting sufficient to support his travel expenses and any distributions made to him by Wall Street at Home or whether he used funds invested by the other

⁸⁹ Sanction Guidelines p. 7.

⁹⁰ Sanction Guidelines p. 7.

⁹¹ Sanction Guidelines p. 2.

shareholders for his travel and payments to himself. Unknown Marquis customers also have invested in penny stocks that Goldstein held in his previously undisclosed personal account and that he may hold through undisclosed Wall Street at Home accounts. Without the requested information it is impossible to conduct a reasonable investigation of potential market manipulation, front-running, and fraud, among other issues.

Third, FINRA has exerted substantial pressure in an attempt to obtain the information in issue. The staff took Goldstein's testimony in an OTR interview, sent written inquiries, and eventually issued a Notice of Suspension. FINRA has expended still further resources in addressing Goldstein's jurisdictional challenge to the Rule 8210 requests. It is apparent from these facts that Goldstein's misconduct has hampered and delayed the staff's investigation.

Fourth, public policy requires the maximum sanctions. Respondent and others must be deterred from flouting their obligation to cooperate in FINRA's investigations and examinations. FINRA simply cannot perform its oversight function effectively if persons subject to its jurisdiction refuse to provide information when requested to do so pursuant to Rule 8210. As the SEC said in its decision in *PAZ Securities*, later upheld on appeal, "A complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."⁹²

Public policy considerations are especially important here because Respondent's challenge to FINRA's jurisdiction in this case is on its face without merit. If Respondent's

⁹² *In re PAZ Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *pet. for review denied sub nom. PAZ Securities v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

theory were correct, and Wall Street at Home were too far removed from FINRA's jurisdiction to require Goldstein to provide information about his business activities conducted through Wall Street at Home, then regulated persons could insulate themselves from oversight simply by placing a corporate shell like SGS between them and the FINRA member through which they conduct a securities business. Such a conclusion would eviscerate FINRA's ability to perform its regulatory mission. In light of the lack of doubt here regarding jurisdiction, the sanctions must be stringent to discourage Respondent and others from concocting baseless theories for refusing to comply with Rule 8210 inquiries.⁹³

⁹³ Goldstein has displayed a pattern of evading regulatory disclosures and inquiries. It is undisputed that he failed for years to report his outside business activities through Wall Street at Home or to disclose his outside investment account. His 2007 OTR, like his 2012 OTR, evidences an overall lack of regard for regulatory inquiries. In both OTRs, his uncertainties and lack of memory regarding basic facts of his outside business activities are not credible. They appear to be evasive maneuvers rather than true failures of memory. Furthermore, the earlier testimony is contradicted by evidence later uncovered by FINRA staff and by Goldstein's later testimony regarding Wall Street At Home. See, for example, the following excerpt from the 2007 OTR (Enf. Ex. 10 (Goldstein Oct. 23, 2007 investigative testimony pp. 34-38)) in which Goldstein denied that he was engaged in outside business activities through Wall Street at Home. He eventually admitted in his 2012 OTR, however, that he had engaged in business consulting through Wall Street at Home and had made distributions from that company to himself, without disclosing the activity until FINRA staff told him that he had to do so:

Q: Have you participated in any outside business activities since you have been employed at Marquis Financial Services?

A: I am not sure.

....

Q: Okay. Is Wall Street At Home.Com an outside business of yours?

A: There is – I don't do any work for them at all. It is just an entity.

....

Q: Do you know if Wall Street At Home.Com was ever listed as an outside business activity on your CRD report?

A: I could not be certain.

Q: Did you ever receive compensation from Wall Street At Home.Com?

A: I am not sure.

Q: Did you ever receive any funds at all from Wall Street At Home.Com?

A: That I couldn't be specific about.

....

Q: And Mr. Goldstein, what is Wall Street At Hom.Com's business purpose?

IV. ORDER

Respondent, Gregory Evan Goldstein, is **ORDERED** to comply fully with all outstanding Rule 8210 requests for information and documents, as described in the Rule 9552 Notice of Suspension, within 21 days of the issuance of the Panel's written decision. If Respondent fails to do so, the Notice of Suspension will become effective. Pursuant to the Rules, if the suspension is not terminated within three months for full compliance, then Respondent will be barred from associating with any member firm in any capacity and fined \$50,000.

Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

Copies to: Gregory Evan Goldstein (via overnight courier and first-class mail)
Martin P. Unger, Esq. (via electronic and first-class mail)
Ian J. Frimet, Esq. (via electronic and first-class mail)
Jonathan J. Golomb, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

A: It is an entity that owns the broker/dealer.

Q: The broker/dealer being Marquis Financial Services?

A: Yes.

Adjudicators can consider matters outside a rule violation when determining appropriate sanctions. *Dennis S. Kaminski*, Exchange Act Rel. No. 65347, 2011 SEC LEXIS 3225, at *38 (Sept. 16, 2011).

Any argument by Respondent that he reasonably relied on advice of counsel, which in certain circumstances might be a mitigating factor under the Sanction Guidelines (Sanction Guidelines at 6, Principal Consideration 7), is rejected. Respondent's conduct at the OTR manifested a reluctance to answer questions with any degree of meaningful information, not reliance on advice of counsel. Furthermore, as set forth above, under the circumstances of this case the assertion that FINRA has no jurisdiction lacked any merit. Any reliance on such a theory was not reasonable.

The Hearing Panel has considered and rejects without discussion any other arguments made by the Parties that are inconsistent with this decision.