

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN VINCENT BALLARD
(CRD No. 2988526),

Respondent.

Disciplinary Proceeding
No. 2010025181001

Hearing Officer – David R. Sonnenberg

HEARING PANEL DECISION

May 6, 2014

Respondent is barred for failing to provide documents and for failing to provide on-the-record investigative testimony, in violation of FINRA Rules 8210 and 2010, and is ordered to pay costs. In light of the bar, no further sanctions are imposed for Respondent's violation of FINRA Rules 3270 and 2010 by engaging in an outside business activity without providing prior written notice to his employing member firm.

Appearances

For the Complainant, Department of Enforcement, William Brice La Hue, Esq., Atlanta, Georgia, and Kevin D. Rosen, Esq., Boca Raton, Florida.

For Respondent, John Vincent Ballard, *pro se*.

DECISION

I. Introduction

Respondent John Vincent Ballard, formerly registered with a FINRA member firm, engaged in a business activity outside the scope of the relationship with his employing member firm without providing prior written notice to the firm. Additionally, during FINRA's investigation into his possible outside business conduct, Ballard failed, upon request, to provide documents and to appear and testify before FINRA staff.

As a result, on May 28, 2013, the Department of Enforcement brought a three-cause complaint against Ballard, charging him with violating FINRA Rules 3270¹ and 2010² (First Cause of Action), and FINRA Rules 8210³ and 2010 (Second and Third Causes of Action).

On July 18, 2013, Ballard filed an answer to the complaint denying the violations and requesting a hearing. Ballard did not deny that he had engaged in an outside business activity.⁴ Rather, he denied that he failed to give his firm notice of his outside activities. He also denied that he had failed to respond to FINRA's requests for documents and investigative testimony. A hearing was held in Memphis, Tennessee, on November 12–14, 2013.⁵ The Hearing Panel rejected Ballard's defenses and concluded that he engaged in the violations charged and barred him from associating with any member firm in any capacity.

II. Findings of Fact

A. Respondent John Vincent Ballard

Respondent Ballard began his career in the securities industry in 1997.⁶ Over

¹ Rule 3270 prohibits a registered person from, among other things, accepting employment from another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

² Rule 2010 requires that members and associated persons adhere to just and equitable principles of trade in connection with the conduct of their business.

³ Rule 8210 requires, among other things, that associated persons or any other person subject to FINRA's jurisdiction provide information in writing or orally to the FINRA staff upon request during an examination or investigation and to testify under oath.

⁴ *See, e.g.*, Tr. (Gibson) at 415 (While cross-examining FINRA's staff examiner, Ballard stated, as part of a question: "I do not deny that I participated with outside business activity [sic]").

⁵ The Hearing Panel consisted of a Hearing Officer and one current member of the District 5 Committee. Originally, two current members from the District 5 Committee were appointed to serve as panelists. *See* Notice of Appointment of Hearing Panelists (Sept. 24, 2013). But on November 11, 2013, one day before the hearing was scheduled to begin, Ballard objected to one of the panelists. That panelist then voluntarily withdrew and the Chief Hearing Officer determined that she would not appoint a replacement panelist pursuant to FINRA Rule 9234(a). As a result of the panelist's withdrawal, the Hearing Officer denied the objection as moot, *see* Order Denying Objection to Panelist (Nov. 18, 2013), and the case proceeded to hearing with a panel comprised of one panelist and the Hearing Officer.

⁶ CX-1, at 7.

the succeeding years, he was employed by 18 broker-dealers,⁷ including International Financial Solutions (“IFS”) and Guzman & Company (“G&C” or “Firm”). Ballard was registered at IFS as a General Securities Representative and an Investment Company Products/Variable Contracts Representative from May 26, 2010, until November 16, 2010.⁸ On November 16, 2010, IFS discharged Ballard, claiming he failed to repay an advance he received from the firm; failed to honor limits on a debit card issued by the firm; and had not honored promises he had made “regarding the business he was hired to do.”⁹

After his discharge, Ballard was registered as a General Securities Representative at G&C from December 21, 2010, until August 12, 2011.¹⁰ On July 14, 2011, G&C terminated Ballard’s employment for non-compliance with Firm policy relating to outside business activities.¹¹ Following his termination, Ballard has not been registered with any FINRA member firm.¹²

B. Ballard Engages in an Outside Business Activity Without Providing Prior Written Notice to G&C

G&C is a FINRA member firm whose main business is institutional brokerage and equities, and also includes fixed income and investment banking business.¹³ Its president is

⁷ CX-1, at 6–7.

⁸ CX-1, at 7–8.

⁹ CX-1, at 7; CX-2, at 2; Tr. (Gibson) at 262.

¹⁰ CX-1, at 7.

¹¹ CX-1, at 7; CX-13, at 2; CX-12; Tr. (Leopoldo Guzman, hereafter, “Guzman”) at 58.

¹² Although Ballard is no longer registered or associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because: (1) the complaint was filed within two years after the date upon which Ballard ceased to be associated with a FINRA member firm, and (2) the complaint charges him with (a) misconduct that occurred while he was associated with a FINRA member firm and (b) failing to respond to FINRA’s requests for information and failing to appear for an on-the-record interview during the two-year period after the date upon which he ceased to be associated with a FINRA member firm.

¹³ Tr. (Guzman) at 45–46.

Leopoldo E. Guzman (“L. Guzman”).¹⁴ Hoping to generate fixed income business from municipalities, on December 10, 2010, G&C hired Ballard,¹⁵ who specialized in this business line.¹⁶ Specifically, G&C expected Ballard, operating as an independent contractor under the name “Ballard Group,” to solicit municipalities to enter into certain trading relationships with G&C;¹⁷ to market G&C’s ability to transact in securities, instruments and portfolios of liquid fixed-income assets other than money market funds; and to provide instruction and certification in the practices of money management to municipal governments.¹⁸ William Robertson, head of fixed income,¹⁹ was Ballard’s supervisor.²⁰ At the time Ballard became employed at G&C, he represented on his Form U4 that he was not currently engaged in any other business.²¹

Ballard’s efforts on behalf of G&C did not prove successful. He generated neither transactional business nor revenue for the Firm, nor any compensation for himself.²² Ballard eventually told Robertson that he might have to seek other employment or do something else to generate income. In response, a few months before Ballard’s termination, Robertson told him that as long as he disclosed the outside employment to the Firm’s compliance personnel, and there was not a conflict of interest, he did not believe the Firm would have a problem with any

¹⁴ Tr. (Guzman) at 44–45.

¹⁵ CX-1, at 7.

¹⁶ Tr. (Guzman) at 47; Tr. (Robertson) at 228.

¹⁷ CX-9, at 2. *See also* Tr. (Guzman) at 49; Tr. (Robertson) at 220 (Ballard was on the sale side covering mainly state and local governments).

¹⁸ CX-9, at 2; Tr. (Guzman) at 121–22.

¹⁹ Tr. (Guzman) at 48.

²⁰ Tr. (Guzman) at 47–48; Tr. (Robertson) at 219.

²¹ CX-11, at 14–15.

²² Tr. (Robertson) at 228; Tr. (Guzman) at 56–57. In Guzman’s words, there were “no tangible results from any action that he might have taken.” Tr. (Guzman) at 57.

outside employment.²³ They had no follow-up discussions on the subject,²⁴ and Ballard never told Robertson that he actually was seeking other employment.²⁵

On May 31, 2011, Ballard became employed with GSS as a general manager.²⁶ GSS provides security services to businesses and governments to ensure the security of people, property, products, and reputation.²⁷ At that time, Ballard was employed by G&C.²⁸

G&C's policy regarding outside business activities required employees to complete an Outside Business Activity Request form and submit it to the Compliance Department before engaging in the activity. The Firm's policy required approval, not just notification.²⁹ Compliance would approve or disapprove the outside business activity in writing and notify the employee and the employee's supervisor.³⁰ L. Guzman would be consulted in connection with the determination, but the Firm's chief compliance officer would communicate the decision.³¹

By at least January 3, 2011, Ballard was aware of the Firm's procedures regarding outside business activities.³² Nevertheless, he did not notify the Firm of his outside employment with GSS, submit a request for approval, or obtain approval to engage in outside employment.³³

²³ Tr. (Robertson) at 222, 226–27, 252.

²⁴ Tr. (Robertson) at 223.

²⁵ Tr. (Robertson) at 221–22.

²⁶ CX-19. In this decision, the company is referenced by its initials, GSS.

²⁷ CX-7.

²⁸ Tr. (Guzman) at 64.

²⁹ Tr. (Guzman) at 65; CX-16, at 4.

³⁰ CX-16, at 5.

³¹ Tr. (Guzman) at 65, 115, 168. The policy defined “outside business activities” as including, but not limited to: “Employment with an outside entity; Acting as an independent contractor to an outside party; Serving as an officer, director, or partner; Acting as a finder; Referring someone and receiving a referral fee; Receiving other compensation for services rendered outside the scope of employment with [G&C].” CX-16, at 4.

³² Tr. (Guzman) at 73; CX-16, at 6.

³³ Tr. (Guzman) at 64, 168; CX-16.

Specifically, neither L. Guzman³⁴ nor Robertson³⁵ knew of Ballard's outside employment with GSS. Ballard's employment with GSS ended on or about June 30, 2011.³⁶

Two weeks later, matters took a significant turn. On or about July 12, 2011, FINRA examiner Christine Gibson telephoned G&C's chief compliance officer, Mark K. Guzman ("M. Guzman"),³⁷ and informed him that she had learned that Ballard was employed by another company.³⁸ Not having been aware of that, M. Guzman contacted Ballard and asked him for an explanation.³⁹ Ballard did not deny the outside employment. Rather, he responded that he had previously notified the Firm about it. And, as purported evidence of this notification, on July 14, 2011, Ballard sent M. Guzman an email, asking if he had received an earlier email dated May 26, 2011. Attached to that ostensibly earlier email was a letter also dated May 26, 2011 ("May 26 Letter") to M. Guzman (and copied to Bill Robertson). That letter requested the Firm to:

update my U-4 to reflect an outside business activity. I will be accepting a position with [GSS] in Memphis as a manager, starting May 27th. I will work approximately 20-40 hours per week. This will be a temporary job for me, as I need the benefits for a family member. It is not financial in nature of any kind.⁴⁰

Notwithstanding the date on the letter, the Hearing Panel concluded that Ballard had not sent this letter to M. Guzman on May 26, 2011. Moreover, the Panel concluded that Ballard had

³⁴ Tr. (Guzman) at 63–65.

³⁵ Tr. (Robertson) at 226–27, 229. On February 21, 2012, Robertson sent an email to Mark Guzman stating that he was unaware of Ballard's outside employment until he was notified of it on January 12, 2011. CX-16, at 9. The date in the email, however, is incorrect, as Robertson explained during his testimony. Robertson testified that in January 2011, Ballard had just joined the Firm and, therefore, the correct date of his notification was either June or July, 2011, when Mark Guzman, the Firm's chief compliance officer, informed Robertson of it. Tr. (Robertson) at 230–31.

³⁶ CX-19; CX-6.

³⁷ Tr. (Guzman) at 54. M. Guzman is L. Guzman's son. *See also* CX-16.

³⁸ Tr. (Guzman) at 60.

³⁹ Tr. (Guzman) at 60.

⁴⁰ Tr. (Guzman) at 60, 68; CX-16, at 7–8. The May 26 Letter was attached to an email cover page of that date. Tr. (Guzman) at 172.

not created the letter until July 14, 2011, less than an hour before he sent it to M. Guzman. This conclusion is supported by the following four facts.

First, no one at the Firm recalled receiving the email dated May 26, 2011.⁴¹

Second, the Firm examined its email archives for messages sent by Ballard and messages received by M. Guzman and did not locate the May 26, 2011 email.⁴²

Third, when a document is created using Microsoft Word, a set of document “Properties,” including the date the document was created, is automatically associated with the document. This metadata⁴³ can be displayed by selecting the “Properties” tab in Microsoft Word.⁴⁴ As part of its efforts to determine if it had received the May 26 Letter before July 14, the Firm reviewed and printed out the metadata relating to the letter.⁴⁵ The metadata reflects that the letter was created on July 14, 2011, at 10:43 a.m.—44 minutes before Ballard sent it to M. Guzman.⁴⁶

And fourth, as noted above, L. Guzman was unaware that Ballard was employed elsewhere. This is significant because L. Guzman would have been involved in any decision to

⁴¹ Tr. (Guzman) at 60–61; *see also* Tr. (Robertson) at 229 (Robertson never saw the May 26 Letter until the FINRA staff gave it to him shortly before the hearing).

⁴² Tr. (Guzman) at 60–61.

⁴³ “Metadata” is defined as “a set of data that describes and gives information about other data.” *See Oxford English Dictionary*, available at <http://www.oed.com/view/Entry/117150?redirectedFrom=metadata#eid37413841>.

⁴⁴ Tr. (Guzman) at 79–80.

⁴⁵ CX-18 at 7 (printout from the Firm’s computer system of the metadata captured in Microsoft Word for the May 26 Letter); Tr. (Guzman) at 179.

⁴⁶ *See* CX-18, at 7. FINRA examiner Gibson testified that she had the metadata validated by the Local Area Network coordinator in her office who, in turn, had it confirmed by FINRA’s Information Technology Department in Washington, DC. Tr. (Gibson) at 320, 329, 484–85; 494–95. Although Enforcement did not call these witnesses to testify, Gibson’s testimony was probative and reliable: it was under oath; corroborated by other evidence showing that Ballard neither created nor sent the May 26 Letter at that time; and was not contradicted by other evidence. Accordingly, her testimony was admissible and the Hearing Panel fairly relied upon it. *See Dep’t of Enforcement v. Sears*, No. C07050042, 2007 FINRA Discip. LEXIS 1, at *13–14 (NAC Sept. 24, 2007) (addressing factors in determining whether it is appropriate to rely on hearsay evidence).

approve outside employment,⁴⁷ and no one other than he had ever given written approval for such employment (as it was not a common event).⁴⁸

The Firm concluded that it first received the May 26 Letter on July 14, 2011,⁴⁹ and that the transmittal email was not a “true email,” but was made to look like it was sent to the Firm in May 2011.⁵⁰ As a result of his undisclosed outside business activity and his attempt to deceive the Firm about his lack of prior notification, the Firm terminated Ballard on July 14, 2011.⁵¹

C. Ballard Fails to Provide Documents and Investigative Testimony in Response to Rule 8210 Requests

1. Background

FINRA staff began investigating Ballard in December 2010 following his discharge from IFS.⁵² Initially, the scope of the investigation focused on the reasons IFS had given in the Form U5 for his termination.⁵³ In 2010 and 2011, the staff sent Ballard two requests for information and documents regarding, among other things, the reasons IFS had given in the Form U5 for his

⁴⁷ Tr. (Guzman) at 113.

⁴⁸ Tr. (Guzman) at 114. By contrast, while cross-examining L. Guzman, Ballard claimed that the Firm was aware of his outside business activities and had approved them, and that he had signed outside activity forms. Tr. (Guzman) at 111–13, 122–23, 132. He produced no evidence to support these assertions, and L. Guzman denied them. In assessing L. Guzman’s credibility, the Panel was mindful that on cross-examination, he displayed hostility toward Ballard. *See, e.g.*, Tr. (Guzman) at 162, 130–31. Notwithstanding his hostility, the Panel found L. Guzman’s testimony credible. It evidenced a precise and clear recollection of the facts and was corroborated by Robertson’s testimony as well as by the metadata regarding the May 26 Letter. Further, L. Guzman’s testimony was not undermined by cross-examination.

⁴⁹ Tr. (Guzman) at 79; CX-18, at 6.

⁵⁰ Tr. (Guzman) at 60–61.

⁵¹ Tr. (Guzman) at 60–61, 69; CX-16, at 3; CX-14. According to L. Guzman, even if Ballard had sent the May 26 Letter to the Firm on the date indicated, the letter, by itself, would have been insufficient for the Firm to have approved the outside business activity. Tr. (Guzman) at 188, 201–02.

⁵² Tr. (Gibson) at 262, 264; CX-2.

⁵³ As discussed above at 3, IFS discharged Ballard claiming he had not repaid an advance the firm had given him; because he failed to honor limits on a debit card; and because he had not honored promises he had made “regarding the business he was hired to do.”

termination.⁵⁴ Ballard responded in part to each request,⁵⁵ but provided no documents.⁵⁶

Although Ballard's responses were incomplete, in July 2011, after the staff learned that Ballard had been employed by GSS, the staff shifted the focus of its investigation to his outside business activities with GSS.⁵⁷

Over the next year, the staff sought documents and investigative testimony from Ballard regarding his outside business activities. During the investigation, the staff sent Ballard seven requests for documents: an initial request and six follow-up requests seeking the documents requested initially. Ballard never produced any documents in response and never explained adequately why he failed to do so. The complaint charged him with not responding to the last two follow-up requests, dated June 25, and July 18, 2012. The staff also sent Ballard two requests to appear for an on-the record interview, and twice he failed to appear and testify. The complaint also charges him with failing to appear for testimony.

2. FINRA's Attempts to Obtain Documents from Ballard Regarding His Outside Business Activity

After learning that Ballard may have been involved in an outside business activity, and before sending him the document and testimony requests at issue in this case, the staff spoke with Ballard by telephone. That phone call set the stage for the developments that followed.

⁵⁴ CX-3; CX-4.

⁵⁵ CX-5, at 1–2; Tr. (Gibson) at 275, 279.

⁵⁶ Tr. (Gibson) at 277.

⁵⁷ Tr. (Gibson) at 298, 412. There is no evidence in the record regarding whether Ballard eventually provided a complete response to the first two Rule 8210 requests. The charges in the instant proceeding arose from the staff's investigation of Ballard's outside business activities. No charges were brought in connection with Ballard's discharge from IFS. However, as explained below, in assessing sanctions the Hearing Panel considered Ballard's cooperation during the entire investigation, including the first phase which focused on his discharge from IFS.

On or about July 14, 2011, Gibson interviewed Ballard by telephone. During the telephone call, which Gibson memorialized the next day in a memorandum,⁵⁸ Ballard admitted to having been employed by GSS and explained the circumstances relating to that employment. Specifically, Ballard told Gibson, among other things, that he had earned no income since January 2011, that he could not maintain his medical COBRA payments, and that he had told his supervisor, Robertson, that because he was not generating any business, he would have to seek additional employment. Ballard admitted to Gibson that he did not follow up with Robertson about this subject when he did find employment with GSS.⁵⁹ Ballard further told Gibson that he had started his job at GSS on May 26, 2011, that it paid \$80,000 per year, plus benefits, and that he was terminated on July 1, 2011.⁶⁰ Finally, Ballard told Gibson that he notified G&C verbally about the job and created an email on May 26, 2011, notifying the Firm about it in writing, but never sent the email because he forgot to hit the “send” button on his computer.⁶¹

On or about July 14, 2011, Gibson contacted G&C to learn if it knew of and had approved Ballard’s outside employment, and tried to schedule an interview with Ballard and M. Guzman to discuss the matter.⁶² After agreeing on a time, M. Guzman sent Gibson an email on July 14, 2011, notifying her that he would not participate in the interview with Ballard because the Firm had terminated Ballard.⁶³ Seven months later, in February 2012, the staff began requesting documents from Ballard relating to his outside business activities.

⁵⁸ Tr. (Gibson) at 280; CX-6.

⁵⁹ Tr. (Gibson) at 281; CX-6.

⁶⁰ Tr. (Gibson) at 282; CX-6.

⁶¹ Tr. (Gibson) at 282; CX-6. During the phone interview, Gibson asked Ballard to provide her with a written statement of their discussion. Ballard did submit a written statement on August 24, 2011, CX-8; Tr. (Gibson) at 598–600, but it did not address what they had discussed. Rather, it addressed the circumstances of his hiring and termination at IFS. CX-8; Tr. (Gibson) at 290–91.

⁶² Tr. (Gibson) at 297–98.

⁶³ CX-12; Tr. (Gibson) at 298.

a. The Initial Request for Documents on February 7, 2012, and Four Follow-Up Requests Seeking the Same Documents

On February 7, 2012, FINRA staff sent Ballard a request for documents pursuant to Rule 8210.⁶⁴ The request letter contained five itemized requests for documents concerning Ballard's employment at GSS, bank statements, tax returns, and any emails he sent to G&C regarding his employment with GSS.⁶⁵ The staff requested these documents to better understand Ballard's employment at GSS (including verifying if he had received compensation) and whether he had notified G&C of it.⁶⁶

On April 6, 2012, after this initial February 7 request and three follow-up requests seeking the same documents, Ballard finally responded by email to the staff. In that email, he explained that he was unable to provide any of the requested documents because "collectively I do not have on file, or any access to at this time, nor in the past have had access to them." He also requested an opportunity to provide the staff with "extensive information" regarding the staff's inquiry at FINRA's Atlanta regional office "at your earliest appointed time."⁶⁷

The staff did not consider Ballard's April 6, 2012 email responsive to the February 7 request because he produced no documents and failed to specify which reasons for non-

⁶⁴ CX-20. This request did not reference the prior Rule 8210 requests that the staff had sent relating, primarily, to Ballard's termination from IFS.

⁶⁵ Tr. (Gibson) at 361.

⁶⁶ Tr. (Gibson) at 333–35. Ballard did not respond to the February 7, 2012 request, Tr. (Gibson) at 337–38, or to two follow-up requests on February 22, 2012, CX-26, at 10, and March 8, 2012, CX-26, at 8. The staff then sent Ballard a third follow-up Rule 8210 request on March 23, 2012, CX-26, at 6.

⁶⁷ CX-21.

production applied to each requested item.⁶⁸ Thus, the staff sent him a fourth follow-up request, seeking the same documents originally sought on February 7, 2012.⁶⁹

As detailed below, after Ballard failed to respond to this fourth follow-up request, the staff sent him two more requests, dated June 25 and July 18, 2012, seeking the same documents first sought on February 7, 2012. The complaint charges Ballard with failing to respond to those June 25 and July 18 requests.

b. The Fifth and Sixth Follow-Up Requests—June 25 and July 18, 2012

On June 25, 2012, the staff sent Ballard its fifth follow-up Rule 8210 request seeking the same documents requested on February 7, 2012,⁷⁰ and attached the prior requests.⁷¹ The staff requested that he provide the documents by July 9, 2012.⁷² On June 27, 2012, Ballard sent the staff an email stating that he had already responded by email, though he did not specify the date of the earlier email.⁷³ Later that day, believing she had not received that earlier email,⁷⁴ Gibson

⁶⁸ Tr. (Gibson) at 624; *see also* Tr. (Gibson) at 625–26 (the April 6 email was not responsive because it did not include documents).

⁶⁹ The staff sent Ballard this fourth follow-up request on April 11, 2012. CX-26, at 4–5.

⁷⁰ CX-26, at 2–3; Tr. (Gibson) at 360. The request was sent by certified and first-class mail to Ballard’s residential address in Memphis, Tennessee, appearing in the Central Registration Depository (“CRD Address”), CX-1, at 1; to another address identical to the CRD Address but identified as located in Germantown, Tennessee, on Ballard’s April 6 email (“Germantown Address”); to a Post Office box address the staff located by a computer-assisted search (“PO Box Address”), Tr. (Gibson) at 347; and by email. Return receipts for the certified mailings to the CRD and Germantown Addresses were returned with illegible signatures. CX-26, at 14.

⁷¹ Tr. (Gibson) at 357–58. CX-26, at 4–5 (April 11, 2012 request); 6–7 (March 23, 2012 request); 8–9 (March 8, 2012 request); 10 (February 22, 2012 request); and 11–13 (February 7, 2012 request). The requests issued after February 7 sought the documents not provided in response to the February 7, 2012 request. Tr. (Gibson) at 361.

⁷² As discussed below, the staff had scheduled Ballard’s testimony for the next day, July 10, 2012.

⁷³ CX-27.

⁷⁴ Tr. (Gibson) at 366. It appears that Ballard was referring to his April 6 response, which the staff had, in fact, received.

so informed Ballard, and directed him to resend his response for receipt by July 9, 2012.⁷⁵

Ballard did not provide any documentation in response.⁷⁶

On July 18, 2012, FINRA staff sent Ballard its sixth Rule 8210 follow-up request for the documents originally sought on February 7, 2012.⁷⁷ The July 18 document request notified Ballard that as a result of his failure to provide the requested information, he had violated Rule 8210, and set a response deadline of August 1, 2012.⁷⁸ Ballard did not respond to the request.⁷⁹ These fifth and sixth follow-up requests seeking the documents requested on February 7, 2012, are the subject of this disciplinary proceeding.

3. Post-Complaint Developments Regarding the Requested Documents

Two months before the hearing, on September 11, 2013, Ballard sent Enforcement counsel an email providing a further response to the five itemized document requests first sent to him on February 7, 2012.⁸⁰ Again, he produced no documents. Instead, he explained that during the time period of the request, he did not have a bank account, his tax records were in storage (and he did not currently have copies of them), and much of the information sought was not in his control or possession. He also offered to sign a release to enable Enforcement to obtain certain documents.

⁷⁵ CX-28. Gibson also sent Ballard a separate email on that date explaining that his April 6, 2012 email was the only response she had received from him and that it was not responsive to the Rule 8210 request. CX-29. Gibson's June 27, 2012 email was the first time that the staff had informed Ballard that his April 6, 2012 response was deficient. Tr. (Gibson) at 610–11. She did not, however, identify the deficiencies. Tr. (Gibson) 547–49. At the hearing, Gibson testified that the April 6, 2012 response was not responsive because it did not contain documents and provided a vague explanation for the non-production. Tr. (Gibson) 375–76. On cross-examination, when asked if "it responsive at all," she conceded that while it was not completely responsive, "it was responsive." Tr. (Gibson) at 558–59.

⁷⁶ Tr. (Gibson) at 362.

⁷⁷ CX-37. This request also attached the February 7, 2012 request and the subsequent document requests.

⁷⁸ CX-37. The staff sent the July 18, 2012 document request by certified mail, return receipt requested and by first class mail to his CRD and Germantown Addresses and by email. The certified mail receipts for the mail sent to the CRD and Germantown Addresses were returned with illegible signatures. CX-37, at 15.

⁷⁹ Tr. (Gibson) at 393.

⁸⁰ CX-46, at 2–4.

On September 16, 2013, FINRA staff sent Ballard another request for documents, pursuant to Rule 8210. This request did not simply reiterate the earlier document requests. Instead, it sought, among other things, emails to and from Ballard's Bloomberg email address, bank account statements and tax information (identified more specifically and covering a different time period than sought by the February 7, 2012 request and successive requests), and documents evidencing salary or other payments received from GSS.⁸¹

The next day, September 17, 2013, Enforcement notified Ballard that it still wanted his tax returns (even if they were in storage) and requested, as well, a signed release from him directing GSS to provide the staff with his employment documentation.⁸²

Ballard produced no documents in response to the September 16, 2013 Rule 8210 request.⁸³ But on October 1, 2013, he sent an email to Enforcement counsel reiterating that he did not possess the documents originally requested on February 7, and asked that Enforcement provide him with releases enabling Enforcement to obtain the documents directly from those who possessed them.⁸⁴ The record is silent about whether Enforcement provided the requested releases or whether it ever obtained any of the requested documents.⁸⁵

4. Ballard Twice Fails to Appear for an On-the-Record Interview

As discussed above, after the staff sent Ballard the February 7, 2012 request and three follow-up requests, Ballard responded, by email, on April 6, 2012. After receiving Ballard's email response, and finding it inadequate, the FINRA staff sought to take Ballard's on-the-record

⁸¹ CX-45; Tr. (Gibson) at 404–05.

⁸² CX-46, at 1–2.

⁸³ Tr. (Gibson) at 405–06.

⁸⁴ CX-46, at 1.

⁸⁵ Gibson did testify, however, that she believed that Enforcement counsel sent Ballard certain documentation for him to submit to the IRS to obtain his tax returns and that Ballard had “provided some sort of response.” Tr. (Gibson) at 528–29, 538.

testimony.⁸⁶ On June 12, 2012, Gibson sent Ballard a request, pursuant to Rule 8210, that he provide testimony on July 10, 2012, at 10:00 a.m., at FINRA's Atlanta offices.⁸⁷ The request directed Ballard to confirm his appearance to the staff by June 27, 2012. The next day, June 13, 2012, Ballard sent the staff an email stating that he "will look forward to the interview on the 10th."⁸⁸

Thereafter, Gibson telephoned Ballard to confirm his appearance at the on-the-record interview. On July 9, 2010, 5:07 p.m., Ballard sent Gibson an email asking her to tell him the time his testimony was scheduled to begin on July 10.⁸⁹ A few minutes later, Gibson responded by email, attaching a copy of the Rule 8210 testimony request.⁹⁰ Gibson heard nothing further that day from Ballard.

The next morning, July 10, Gibson arrived in her office shortly before 10:00 a.m.⁹¹ When she logged on to her computer, she noticed that overnight she had received an email from Ballard. In that email, sent at 3:04 a.m., Ballard notified her that he would not be able to attend his testimony in person, and requested that she interview him that day via telephone or video conference.⁹² At no time before sending this email had Ballard requested a telephonic or video

⁸⁶ The staff first sought to take his testimony in April. Tr. (Gibson) at 343–44. Ballard requested that the staff schedule his interview in May, and the staff accommodated that request, but postponed the interview because of a death in Gibson's family. Tr. (Gibson) at 343. The staff then contacted Ballard by email on June 8, 2012, and inquired about his availability for the week of July 9, and specifically asked if he were available for an on-the-record interview on July 10, 2012. CX-22; Tr. (Gibson) at 343–44. Ballard did not respond to that inquiry.

⁸⁷ The staff sent the June 12, 2012 request by certified mail, return receipt requested, and by first-class mail, to Ballard's CRD, Germantown, and PO Box Addresses. CX-24. The postal receipts for the CRD and Germantown mailings were returned bearing the signature of what appears to be the name "John Ballard," though they are partially illegible. CX-24, at 6. Also on June 12, Gibson sent Ballard an email informing him that she had scheduled his testimony for July 10, 2012, in Atlanta, and, by separate email, also sent him the Rule 8210 testimony request. Tr. (Gibson) at 345; CX-23; CX-24.

⁸⁸ CX-25.

⁸⁹ CX-30; Tr. (Gibson) at 378.

⁹⁰ CX-31.

⁹¹ Tr. (Gibson) at 382.

⁹² CX-32; Tr. (Gibson) at 379.

conference, nor had he informed the staff that he would not be able to attend in person on July 10.⁹³ Ballard did not explain why he could not appear in person.

At 9:48 a.m., Gibson informed Ballard by email that she was not able to conduct his interview that day by video or teleconference and that she would “proceed with the testimony at 10 am and the record will show you did not appear.”⁹⁴ Ten minutes later—at approximately the time that Gibson was stating on the record that Ballard had not appeared for testimony⁹⁵—Ballard sent Gibson another email. In his email, Ballard asked Gibson to inform him of the earliest date on which she could conduct his interview by video or teleconference.⁹⁶ Ballard did not appear for his testimony on July 10, 2012.⁹⁷

On July 13, 2012, Gibson followed up with an email to Ballard requesting that, by July 17, 2012, he explain why he had not appeared for testimony on July 10 and why was he was now asking that his testimony be taken by telephone or video conference.⁹⁸ Ballard did not respond to that email request.⁹⁹ Thereafter, Gibson attempted to contact Ballard to reschedule his testimony, but Ballard did not respond to Gibson’s voice messages or emails.¹⁰⁰

⁹³ Tr. (Gibson) at 381–82, 603–04.

⁹⁴ CX-33. At the hearing, Gibson explained that logistical arrangements could not be made on such short notice to take Ballard’s testimony at 10:00 a.m. via video or telephone conference, that the court reporter had already arrived at FINRA’s Atlanta office and that was where she, Enforcement counsel, and the exhibits were located. Tr. (Gibson) at 379. Gibson further explained that she would have needed to arrange for a court reporter to be present at Ballard’s location in Memphis, and the exhibits would have had to be sent there as well. Finally, she testified that had Ballard earlier requested a telephone or video conference, and provided a basis for the request, she likely would have, instead, travelled to Memphis and taken Ballard’s testimony in person. Tr. (Gibson) at 632–33.

⁹⁵ CX-34, at 1–4.

⁹⁶ CX-35.

⁹⁷ Tr. (Gibson) at 380.

⁹⁸ CX-36. The email does not specify whether the request was made pursuant to Rule 8210. Gibson sent this email to Ballard to determine if there had been a financial impediment to his appearing in Atlanta for his interview or some other difficulty that would have led her to take his testimony in Memphis. Tr. (Gibson) at 641.

⁹⁹ Tr. (Gibson) at 380, 383, 385; *see also id.* at 551–52.

¹⁰⁰ Tr. (Gibson) at 383.

On July 18, 2012, not having received a response to her attempts to reschedule his testimony, Gibson sent Ballard an email notifying him that because he had not responded to her July 13, 2012 email, she was rescheduling his testimony for August 14, 2012, at 10:00 a.m., at FINRA's Atlanta offices.¹⁰¹ That day, she also sent him a request, pursuant to Rule 8210, for an on-the-record interview.¹⁰²

On August 2, 2012, at 11:41 p.m., Ballard sent an email to Gibson requesting an alternative date for his on-the-record interview.¹⁰³ The next morning, Gibson responded by email asking Ballard to explain the basis for his request and that he provide at least three alternative dates in August for his testimony. The email also informed him that unless and until they agreed upon an alternative date, he remained obligated to appear and testify on August 14.¹⁰⁴ Ballard did not respond to this email and Gibson did not reschedule the testimony.¹⁰⁵ Ballard did not appear, as scheduled, on August 14, 2012, for his testimony.¹⁰⁶

As a result of Ballard's failure to provide documents and testimony, FINRA staff was unable to complete its investigation, and was prevented from gaining a full understanding of the circumstances related to Ballard's employment at GSS and the disclosure, or non-disclosure, to G&C about that employment.¹⁰⁷

¹⁰¹ CX-38.

¹⁰² Tr. (Gibson) at 383; CX-39. The staff sent the July 18, 2012 testimony request to Ballard's CRD, Germantown, and PO Box Addresses, and emailed it to him as well. CX-39; Tr. (Gibson) at 387–88. The certified mail receipts for the mailing sent to the CRD and Germantown Addresses were returned with illegible signatures. CX-39, at 6.

¹⁰³ CX-40.

¹⁰⁴ CX-41.

¹⁰⁵ Tr. (Gibson) at 395, 397.

¹⁰⁶ Tr. (Gibson) at 395.

¹⁰⁷ Tr. (Gibson) at 403–04.

III. Conclusions of Law

A. Ballard Violated FINRA Rules 3270 and 2010 by Engaging in an Outside Business Activity Without Providing Prior Notice to His Employing Member Firm

The First Cause of Action charged Ballard with violating Rules 3270 and 2010 by failing to provide G&C with prior written notice of his outside employment with GSS. Rule 3270 prohibits registered persons from, among other things, being an employee of another person or being compensated or having the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with their member firm, unless they have provided prior written notice to the member, in such form as specified by the member. The purpose of the Rule is to ensure that firms “receive prompt notification of all outside business activities of their associated persons so that the member’s objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law.”¹⁰⁸

The evidence, including Ballard’s admissions during his phone interview with Gibson on July 14, 2011, demonstrated that while employed at member firm G&C, he became employed at GSS as a general manager. This employment was outside the scope of his relationship with G&C. And while he disclosed to his supervisor that he might have to seek new employment, he never provided written notice—or, indeed any notice—to the Firm that he had become

¹⁰⁸ *Dep’t of Enforcement v. Houston*, No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *33 (NAC Feb. 22, 2013), *aff’d*, *Kent M. Houston*, Exchange Act Rel. No. 71589, 2014 SEC LEXIS 614 (Feb. 20, 2014) *quoting Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Rel. No. 26063, 1988 SEC LEXIS 1841, at *3 (Sept. 6, 1988); *see also NASD Notice to Members 88-86* (Nov. 1988) (introducing the substance of the predecessor to Rule 3270 and explaining that the rule is “intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives”).

employed with GSS.¹⁰⁹ Accordingly, the Hearing Panel concluded that Ballard violated FINRA Rules 3270¹¹⁰ and 2010.¹¹¹

B. Ballard Violated FINRA Rules 8210 and 2010 by Failing to Provide Documents in Response to the June 25 and July 18, 2012 Requests

The complaint charges Ballard with violating Rules 8210 and 2010 by failing to provide documents in response to the June 25 and July 18, 2012 Rule 8210 requests. Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Specifically, pursuant to the Rule, FINRA may require an associated person “to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in the investigation . . . examination, or proceeding.”¹¹² Further, no person shall fail to provide the requested information.¹¹³

Recently, the National Adjudicatory Council (“NAC”) in *Dep’t of Market Regulation v. Lane*¹¹⁴ explained the importance of Rule 8210 and the obligations the Rule imposes on

¹⁰⁹ *Dep’t of Enforcement v. De Vietien*, No. 2006007544401, 2010 FINRA Discip. LEXIS 45, *30–31 (NAC Dec. 28, 2010) citing *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (NBCC Oct. 31, 1997) (explaining that the reach of the predecessor to Rule 3270 extends to all outside business activities, not just securities-related activities).

¹¹⁰ See *Dep’t of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *24–25 (NAC July 26, 2012) citing *Micah C. Douglas*, 52 S.E.C. 1055, 1059 (1996) (finding that respondent’s failure to notify his member firm of outside business activities constituted a violation of FINRA’s rules).

¹¹¹ Ballard’s violation of Rule 3270 constitutes conduct inconsistent with just and equitable principles of trade and, therefore, violates Rule 2010. See *Dep’t of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *25 (NAC July 26, 2012) citing generally *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *19 n.28 (July 1, 2008).

¹¹² Rule 8210(a)(1).

¹¹³ Rule 8210(c).

¹¹⁴ *Dep’t of Market Regulation v. Lane*, No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *67–70 (NAC Dec. 26, 2013), appeal docketed, SEC Admin. Proceeding No. 3-15701 (Jan. 27, 2014).

associated persons. As to the importance of Rule 8210, the NAC reaffirmed that:

FINRA Rule 8210 “is at the heart of the self-regulatory system for the securities industry.”¹¹⁵ It “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”¹¹⁶ . . . The failure to respond to FINRA information requests “frustrates [FINRA]’s ability to detect misconduct, and such inability in turn threatens investors and markets.”¹¹⁷ [Citations in footnotes].

In addressing the obligations imposed on associated persons in responding to Rule 8210 requests, the NAC went on to state unequivocally that:

[i]f an associated person “cannot readily provide the information sought by [FINRA], such a person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so.”¹¹⁸ If the associated person does not have the information, he has “a responsibility to provide a detailed explanation of [his] efforts to date to obtain the information requested and the problems [he] encountered.”¹¹⁹ If there is a problem meeting any deadlines set by FINRA, applicants should raise and resolve such problem with FINRA staff in a cooperative and prompt manner.¹²⁰ [Citations in footnotes].

Additionally, a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.¹²¹

¹¹⁵ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App’x 692 (2d Cir. 2009).

¹¹⁶ *Id.* (citation omitted).

¹¹⁷ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008) (citation omitted), *petition for review denied*, 566 F.3d 1172 (D.C. Cir. 2009).

¹¹⁸ *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *23–24 (Jan. 30, 2009) (internal quotation marks omitted).

¹¹⁹ *Id.*; *see also Dep’t of Enforcement v. Plunkett*, 2013 FINRA Discip. LEXIS 32, at *12 (NAC Dec. 17, 2013) *citing Rooney A. Sahai*, Exchange Act Rel. No. 55046, 2007 SEC LEXIS 13, at *13 (Jan. 5, 2007) (“We have long said that if a respondent is unable to provide the information requested, there remains a duty to explain that inability.”).

¹²⁰ *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *23–24 (internal quotation marks omitted); *see also Charles C. Fawcett*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *18 (Nov. 8, 2007) (“[R]ecipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot”); *cf. Dennis A. Pearson, Jr.*, Exchange Act Rel. No. 54913, 2006 SEC LEXIS 2871, at *17 (Dec. 11, 2006) (holding that a member or an associated person has “an obligation to respond to [a FINRA] request even if his response [is] a statement that he believed he had already provided [FINRA] with the information it had requested”).

¹²¹ *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *30; *Ricupero*, 2010 SEC LEXIS 2988, at *12–13 n.12; *Dep’t of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at *22 n.9 (NAC Feb. 25, 2014).

The evidence established that Ballard failed to respond adequately to the June 25 and July 18, 2012 requests.¹²² First, he never produced any documents in response to either request. Second, he did not provide a prompt and adequate explanation for his non-production. The June 25, 2012 request sought documents requested originally on February 7 and, thereafter, in four subsequent requests.¹²³ On June 27, 2012, Ballard sent an email to the staff directing it to his earlier response.¹²⁴ In that April 6, 2012 earlier response, Ballard perfunctorily stated as to each of the five requested categories of documents: “collectively I do not have on file, or any access to at this time, nor in the past have had access to an item.” This response was vague and failed to explain, as completely as possible, Ballard’s efforts to comply and why he was unable to do so.¹²⁵

In his April 6 response, Ballard requested the opportunity to “provide extensive information” to the staff at its Atlanta office at the “earliest appointed time.” Ballard did not provide an additional explanation regarding his non-production, however, until after he had failed to appear for testimony and the staff filed this disciplinary proceeding. And when he did provide an additional response, it was inadequate. For example, as to his tax records which he claimed were in storage, Ballard failed to explain what efforts he had made to access them or why he was unable to retrieve them. Moreover, his representation that the tax records were in

¹²² Because the staff sent both of these requests to Ballard’s CRD Address, he is deemed to have received them. *See* Rule 8210(d). Additionally, he also had actual notice of the June 25 document request because two days later he sent the staff an email regarding that request. *See* CX-27.

¹²³ *See* CX-26, at 11–13 (February 7, 2012); 10 (February 22, 2012); 8–9 (March 8, 2012); 6–7 (March 23, 2012); 4–5 (April 11, 2012).

¹²⁴ CX-27.

¹²⁵ *Walblay*, 2014 FINRA Discip. LEXIS 3, at *18 (“If an associated person ‘cannot readily provide the information sought by [FINRA], such a person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so.’”) *Id.* at *23 (quoting *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *23). *See also Ricupero*, 2010 SEC LEXIS 2988, at *22–23 (finding that even if respondent had difficulties obtaining documents requested by FINRA, he failed to raise such issues in a cooperative and prompt manner), *aff’d*, 436 F. App’x 31 (2d Cir. 2011).

storage appeared to contradict or, at minimum, raise questions about the veracity of his April 6 response that he neither possessed nor had ever possessed those records. In any event, the law is well-settled that the staff should not have to file a disciplinary proceeding to obtain compliance with a Rule 8210 request,¹²⁶ and here, Ballard never complied.

Accordingly, by virtue of Ballard's failure, without adequate explanation, to produce the documents in response to the June 25 and July 18, 2012 requests, the Hearing Panel concludes that he violated Rules 8210 and 2010.¹²⁷

C. Ballard Violated FINRA Rules 8210 and 2010 by Failing to Provide On-The-Record Testimony

Twice, Ballard failed inexcusably to appear for an on-the-record interview, duly scheduled pursuant to Rule 8210.¹²⁸ Regarding his failure to appear on July 10 for his testimony, Ballard first informed the staff that he looked forward to appearing for his interview on that date. Then, only hours before his testimony was scheduled to begin, he sent an email notifying the staff that he could not appear. By sending his email in the middle of the night, the staff did not see it until early on the morning of the scheduled testimony. Thereafter, Ballard failed to cooperate when the staff attempted to learn why he had not appeared and sought to reschedule

¹²⁶ See *Dep't of Enforcement v. Berger*, No. C9B040069, 2006 NASD Discip. LEXIS 19, *25 (NAC July 28, 2006), citing *Toni Valentino*, Exchange Act Rel. No. 49255, 2004 SEC LEXIS 330, at *15 (Feb. 13, 2004). See also *Michael David Borth*, 51 S.E.C. 178, 180 (1992); *Sundra Escott-Russell*, 54 S.E.C. 867, 872 (2000) (stating that a year-long delay in cooperating did not cure earlier failures to respond). See also *Plunkett*, 2013 SEC LEXIS 1699, *36 (In sustaining the finding of a violation of Rule 8210, the Commission found that "Plunkett did not respond until more than four months after FINRA sued him. When he did finally respond, he produced no documents, offering a variety of excuses as to why they were missing. By waiting as long as he did to respond, Plunkett frustrated not only FINRA's ability to more completely investigate him, but also impeded its ability to investigate the activities of others.")

¹²⁷ See *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, *11 n.9 (NAC Dec. 12, 2012) (A violation of any FINRA rule, including FINRA Rule 8210, constitutes a violation of FINRA Rule 2010).

¹²⁸ As with the June 25 and July 18, 2012 Rule 8210 document requests, the staff sent both requests for testimony to Ballard's CRD Address. Therefore, he is deemed to have received them. See Rule 8210(d). Ballard also had actual notice of the June 12, 2012 request as evidenced by his July 10, 2012 email informing the staff that he would not appear in person that morning for his scheduled testimony. Finally, Ballard had actual notice of the July 18, 2012 request as evidenced by his August 2, 2012 email requesting an alternative date for his testimony.

his testimony. Ballard did not resolve any scheduling difficulties in a prompt and cooperative manner, as he was obligated to do.¹²⁹

Then, after the staff rescheduled his testimony for August 14, 2012, Ballard again failed to appear for testimony without explanation. As a result, the Hearing Panel concludes that Ballard's failure to appear for testimony on July 10 and August 14, 2012, constituted separate and distinct violations of FINRA Rules 8210 and 2010.

IV. Sanctions

A. Ballard is Barred for Failing to Provide Documents and Appear and Testify, in Violation of FINRA Rules 8210 and 2010

According to the FINRA Sanction Guidelines ("Guidelines"), if an individual does not respond in any manner to a request for information, a bar should be standard.¹³⁰ If an individual provides a partial but incomplete response, however, a bar should still be standard, unless the person can demonstrate that the information provided substantially complied with all aspects of the requests. Additionally, if the individual only responds after FINRA files a complaint, there is a presumption that the failure constitutes a complete failure to respond.¹³¹ Further, where mitigation exists, the adjudicators should consider a suspension for up to two years.

The Guidelines also identify principal considerations in determining sanctions for a partial but incomplete response: (1) the importance of the information requested but not provided (as viewed from FINRA's perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to

¹²⁹ *Walblay*, 2014 FINRA Discip. LEXIS 3, at *19 citing *Ricupero*, 2010 SEC LEXIS 2988, at *22–23 (Sept. 10, 2010) (finding that even if respondent had difficulties with obtaining documents requested by FINRA, he failed to raise such issues in a cooperative and prompt manner), *aff'd*, 436 F. App'x 31 (2d Cir. 2011).

¹³⁰ FINRA Sanction Guidelines 33 (2013), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>.

¹³¹ *Guidelines* 33, at n.1.

respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reasons(s) for deficiencies in the response.

Ballard never provided any documents in response to the June 25 and July 18, 2012 document requests.¹³² He also never appeared for an on-the-record interview pursuant to the June 12 and July 18, 2012 requests. Nevertheless, he did provide some information to FINRA staff during both phases of the investigation and after the institution of these proceedings. Accordingly, the Hearing Panel treated Ballard's failure to provide documents and testimony as a partial failure to respond, and applied the Guidelines applicable to partial but incomplete responses.¹³³

Applying these Guidelines to Ballard's Rule 8210 violations, the Hearing Panel concluded that he should be barred from association with any member firm. First, Ballard failed to demonstrate that the information he provided substantially complied with all aspects of the request. The information he provided in response to the requests in the first phase of the investigation did not relate to Ballard's possible outside business activities, the focus of the Rule 8210 requests that are the subject of this disciplinary action. Accordingly, the information provided during the first phase of the investigation does not mitigate Ballard's failure to provide information and appear for testimony during the investigation's second phase.

The information Ballard provided in the second phase of the investigation (and after the complaint was filed) did not substantially comply with the requests. Ballard's April 6 email addressing his failure to produce any documents, though relevant to the requests, fell far short of

¹³² By contrast, in *Houston*, 2014 SEC LEXIS 614, at *10–11, the respondent “appears to have complied with [two Rule 8210 requests for information and documents] to NASD’s satisfaction” before partially responding to a later one.

¹³³ See *Plunkett*, 2013 SEC LEXIS 1699, at *55–56 citing *Kent M. Houston*, Exchange Act Rel. No. 66014, 2011 SEC LEXIS 4491, at *25 & 27 (Dec. 20, 2011).

the full explanation expected of associated persons who claim they cannot produce requested documents.

Additionally, the information Ballard provided to the staff during a phone interview on July 14, 2011, though relevant to subjects about which he would have been questioned at his on-the-record interview, was insufficient. Specifically, the staff would have questioned him under oath about issues relating to whether he notified the Firm of his outside employment and the compensation he received in connection with that outside employment. The staff would have likely also questioned him about the reasons he gave for failing to produce documents. Moreover, in addition to substantially failing to provide all the information sought from him, Ballard also made serious misrepresentations to the staff during that telephone interview, namely, that he had orally informed the Firm of his outside employment and had prepared, but had forgotten to send, a letter notifying it as well.¹³⁴ Finally, the information he provided shortly before the hearing was inadequate and raised questions about the completeness of his earlier April 6 response.

Second, the documents and information not provided were important, as they related directly to the outside business conduct then under investigation,¹³⁵ and, in particular, to key issues such as notice to the employing member firm and the compensation he received from the outside employment.

¹³⁴ Misleading the staff during an investigation is, itself, a violation of Rule 2010. *See Dep't of Enforcement v. Masceri*, 2006 NASD Discip. LEXIS 29, at *35 (NAC Dec. 18, 2006) *citing Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006) (upholding violation of the just and equitable principles of trade rule where respondent provided false and misleading information to NASD); *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).

¹³⁵ *See Houston*, 2014 SEC LEXIS 614, at *14–15 (“[T]he OTR that Houston refused to attend was important. It concerned the nature and scope of Houston’s outside business activity.”).

Third, extraordinary regulatory pressure was necessary to obtain information from Ballard. During the first phase of the investigation, which related to his discharge from IFS, Ballard responded incompletely to the two requests sent to him. This pattern continued when the investigation entered its next phase regarding outside business activities. Beginning on February 7, 2012, the staff sought several categories of documents from Ballard. He did not respond to that request or to two more that followed seeking the same documents. After receiving a fourth request for those documents, Ballard replied on April 6, 2012, with an inadequate explanation about why he could not provide any documents. Over a year and a half later, shortly before the hearing and after receiving three additional Rule 8210 requests seeking the same documents, Ballard responded more fully. But even then, his response was inadequate. Ballard's post-complaint attempt to explain his failure to produce documents, obtained only through persistent regulatory pressure, came too late to be mitigating.

In conclusion, the staff attempted repeatedly to obtain documents and an on-the-record interview from Ballard as part of an investigation into his activities. He never produced any documents, never appeared for an on-the-record interview, and never provided a timely and full explanation for his repeated failures to cooperate. Instead, he stonewalled the investigation, ignoring certain requests, partially responding to others, while holding out the promise of cooperation that never materialized. As a result, Ballard delayed the staff's investigation and prevented its completion.

When Ballard registered with FINRA, he agreed to abide by its rules which are unequivocal with respect to an associated person's duty to cooperate with FINRA investigations.¹³⁶ His recalcitrance demonstrates that he fails to appreciate the obligations of an

¹³⁶ *Walblay*, 2014 FINRA Discip. LEXIS 3, at *17 citing *Joseph G. Chiulli*, 54 S.E.C. 515, 524 (2000).

associated person to cooperate with FINRA investigations and demonstrates, further, that he is unfit to remain in the securities industry. There is no mitigation that warrants a sanction less than a bar. Ballard's Rule 8210 violations in this case stem from a single source of misconduct, namely, a failure to cooperate in connection with an investigation. Accordingly, the Hearing Panel imposes a unitary sanction for Ballard's violations of Rules 8210 and 2010 and will bar him from associating with any member firm in any capacity.¹³⁷

B. In Light of the Bar Imposed for Ballard's Violations of FINRA Rules 8210 and 2010, No Sanctions are Imposed for Ballard's Violations of FINRA Rules 3270 and 2010

For an outside business activities violation, the Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days when there is no aggravating conduct, up to one year when there is aggravating conduct, and a longer suspension or a bar in egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm.¹³⁸ The Guidelines list five principal considerations for adjudicators to consider in assessing sanctions for this violation. Three relate to whether the conduct involved or injured customers, and one focuses on whether the respondent may have created the impression that the member firm approved the product or service that was offered. These considerations do not apply here. The fifth consideration is whether the respondent misled his or her employer member firm about the existence of the outside business activity or otherwise concealed the activity from the firm.

¹³⁷ *Dep't of Enforcement v. De Vietien*, No. 2006007544401, 2010 FINRA Discip. LEXIS 45, at *31–32 (NAC Dec. 28, 2010) (imposing a unitary sanction because the two violations in the case stem from a single source of misconduct. Because the violations are related, and any resulting sanctions would be designed and tailored to deter the same underlying misconduct) *citing Dep't of Enforcement v. Fox & Co. Invs., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NAC Feb. 24, 2005) (“where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve NASD’s remedial goals”), *aff’d*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *36 (Oct. 28, 2005).

¹³⁸ *Guidelines* 13.

By sending the Firm a backdated email and letter on July 14, 2011, Ballard tried to mislead the Firm about whether he had provided prior notification of his outside employment.¹³⁹ Additionally, Ballard's failure to seek prior notification shortly after his supervisor reminded him that he needed to do so makes it likely that his violation was intentional or, at a minimum, reckless.¹⁴⁰ Taking all these factors into account, the Hearing Panel concludes that a one year suspension in all capacities and a fine of \$10,000, as recommended by Enforcement, is an appropriate sanction for Ballard's violations of FINRA Rules 3270 and 2010. However, the Panel does not impose these sanctions in light of the bar imposed for Ballard's violations of Rules 8210 and 2010.

V. Order

John Vincent Ballard is barred from associating with any member firm in any capacity for failing to provide documents and for failing to appear and testify, in violation of FINRA Rules 8210 and 2010. In light of the bar, no further sanctions are imposed for Respondent's violation of FINRA Rules 3270 and 2010 by engaging in an outside business activity without providing prior written notice to his employing member firm. Ballard is also ordered to pay the costs of the hearing in the amount of \$6,850.83, which includes a \$750.00 administrative fee and the cost of the 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. The bar shall

¹³⁹ See *Guidelines 7* (Principal Consideration in Determining Sanctions No. 10: "Whether the respondent attempted to mislead [or] deceive . . . the member firm with which he or she is/was associated").

¹⁴⁰ *Id.* at pages 4–5, above. See *Guidelines 7* (Principal Consideration in Determining Sanctions No. 13: "Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence"). Cf. *Guidelines 7* (Principal Consideration in Determining Sanctions No. 15: "Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from . . . a supervisor that the conduct violated FINRA rules, or applicable securities laws or regulations").

become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.¹⁴¹

David R. Sonnenberg
Hearing Officer
For the Hearing Panel

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¹⁴¹ The Hearing Panel considered and rejected without discussion all other arguments by the parties.