

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDREW LYMAN QUINN
(CRD No. 2453320),

Respondent.

Disciplinary Proceeding
No. 2013038136101

Hearing Officer-Andrew H. Perkins

HEARING PANEL DECISION

October 23, 2015

Former registered representative is barred for failing to respond to Rule 8210 requests for information and documents.

Appearances

For FINRA's Department of Enforcement, Complainant: Christopher Perrin and Aimee Williams-Ramey, San Francisco, California.

Respondent Andrew Lyman Quinn appeared on his own behalf.

DECISION

Respondent Andrew Lyman Quinn was formerly a registered securities broker associated with FINRA member firm Wells Fargo Advisors, LLC ("Wells Fargo") and later with Stifel, Nicolaus & Company, Incorporated ("Stifel Nicolaus"). While at each firm, Quinn borrowed money from one of his customers, LZ, in violation of NASD and FINRA rules.

LZ lodged an investor complaint with FINRA after Quinn failed to make required payments on the loans. Upon receipt of LZ's complaint, FINRA opened an investigation into her allegations. To further the investigation, FINRA requested that Quinn provide information about the loans. But Quinn did not respond to FINRA's repeated requests.

On May 20, 2015, FINRA's Department of Enforcement initiated this disciplinary action against Quinn by filing a Complaint with the Office of Hearing Officers. The Complaint contains three charges. First, the Complaint charges Quinn with borrowing money from LZ in violation of NASD and FINRA rules. Second, the Complaint charges that Quinn engaged in inequitable business conduct by submitting a false compliance questionnaire to Stifel Nicolaus. Third, the

Complaint alleges that Quinn violated FINRA rules by failing to respond to multiple requests for information that FINRA staff had issued under FINRA Rule 8210 and that by this violation he also violated FINRA Rule 2010.

Quinn filed his Answer to the Complaint on July 7, 2015. He admitted each allegation in the Complaint and waived his right to a hearing.

In accordance with FINRA Rule 9221(c), the Hearing Officer determined that a hearing was not required and that the Hearing Panel would consider the case based on the written record.¹ Thus, the Hearing Officer directed Enforcement to file a brief and supporting evidence on or before August 31, 2015, and set a deadline of September 21, 2015, for Quinn to file a response. Enforcement filed a brief, a declaration, and exhibits.² Quinn did not file anything in addition to his Answer.

I. Findings of Fact

Quinn admits all of the allegations in the Complaint. Thus, the only open issue for our determination is the appropriate sanctions required to remediate Quinn's misconduct.

A. Quinn's Background in the Securities Industry

Quinn began his career in the securities industry in 1994.³ In 1999, Quinn associated with Wells Fargo and registered with FINRA as a general securities representative.⁴ He also registered as a general securities sales supervisor.⁵ Quinn left Wells Fargo in June 2010 and joined Stifel Nicolaus where he was registered in the same two capacities until Stifel Nicolaus discharged him in May 2013.⁶ FINRA terminated his registrations effective June 6, 2013.⁷

B. Jurisdiction

FINRA has jurisdiction of this proceeding under FINRA By-Laws, Article V, Section 4(a) because the misconduct alleged in the Complaint occurred while Quinn was associated with a FINRA member firm, and Enforcement filed the Complaint within two years after his registrations terminated. Also, Enforcement issued the Rule 8210 requests that Quinn failed to answer within two years after his registrations ended.

¹ See Scheduling Order dated July 10, 2015.

² Enforcement's exhibits are labeled CX-1 through CX-18.

³ CX-1, at 2.

⁴ CX-1, at 2.

⁵ CX-1, at 2.

⁶ CX-1, at 2.

⁷ CX-1, at 2.

C. Quinn Borrowed Money From His Customer at Wells Fargo

Quinn acquired LZ as a customer in 2008 while he was associated with Wells Fargo.⁸ She was 70 years old at the time.⁹ LZ initially funded her securities account with the settlement proceeds she had received from a medical malpractice lawsuit in connection with the death of her husband.¹⁰

Beginning in May 2009, Quinn began borrowing money from LZ. All told, Quinn borrowed \$64,000 from LZ in eight transactions while she was his customer at Wells Fargo. In each case, he directed her to transfer funds from her Wells Fargo securities account to her checking account and to issue him a check for the loan proceeds.¹¹

The following chart reflects Quinn's borrowing activity with LZ while he was associated with Wells Fargo.

Transaction	Date	Amount
Loan No. 1	May 28, 2009	\$20,000
Promissory Note	June 3, 2009	\$21,600 (includes principal and interest)
Loan No. 2	June 22, 2009	\$10,000
Loan No. 3	July 16, 2009	\$7,000
Promissory Note	July 16, 2009	\$19,720 (includes principal and interest)
Loan No. 4	October 26, 2009	\$6,000
Payment	November 3, 2009	\$11,000 ¹²
Loan No. 5	December 21, 2009	\$7,000
Loan No. 6	December 31, 2009	\$5,000

⁸ CX-18 (LZ Decl. ¶ 3).

⁹ CX-18 (LZ Decl. ¶ 2).

¹⁰ CX-18 (LZ Decl. ¶ 3).

¹¹ CX-18 (LZ Decl. ¶ 5).

¹² CX-7.

Transaction	Date	Amount
Loan No. 7	January 28, 2010	\$4,000
Loan No. 8	February 4, 2010	\$5,000
Promissory Note	May 12, 2010	\$53,000 (payable in quarterly installments of \$5,000 beginning on May 28, 2010) ¹³
Payment	Unknown	\$600

Quinn did not make the required quarterly payments under the May 12, 2010 promissory note. Consequently, in April 2014, LZ complained to Wells Fargo about Quinn's failure to repay the loans.¹⁴ Wells Fargo settled her complaint in August 2014 for \$25,000.¹⁵

Throughout the period that Quinn borrowed money from LZ, she had her securities account at Wells Fargo. The firm had a written policy prohibiting its associated persons from borrowing funds from a customer unless the customer was an immediate family member and the loan was made for non-securities purposes.¹⁶ The loans Quinn obtained from LZ did not fall within either category. LZ is not related to Quinn, and Wells Fargo did not approve any of the loans.

D. Quinn Borrowed Money From LZ at Stifel Nicolaus and He Submitted a False Annual Certification to the Firm

Quinn left Wells Fargo in June 2010 and joined Stifel Nicolaus. He took LZ's account with him.¹⁷ While at Stifel Nicolaus, Quinn borrowed an additional \$3,000 from LZ.¹⁸ Quinn did not repay this loan. But after LZ complained to Stifel Nicolaus, the firm settled her claim by crediting \$3,000 to her securities account on July 31, 2014.¹⁹

¹³ This promissory note appears to document the outstanding balance of all the previous loans, but it is not clear from the evidence how Quinn calculated the amount due LZ.

¹⁴ CX-4, at 2.

¹⁵ CX-4, at 3.

¹⁶ CX-8; Compl. ¶ 9.

¹⁷ CX-10.

¹⁸ CX-5, at 9.

¹⁹ CX-14.

Stifel Nicolaus' written procedures prohibited its associated persons from borrowing from a client unless the client was a bank or other financial institution in the business of lending money and the terms of the loan were those that the institution offered to the general public.²⁰ All other loans had to be approved in writing by the firm's compliance department.²¹ Stifel Nicolaus' compliance department did not approve Quinn's loan from LZ.²² Indeed, Quinn concealed the loan from the compliance department. On an annual employee certification dated February 15, 2011, Quinn falsely denied having borrowed money from any customer.²³

E. Quinn Failed to Provide Requested Information and Documents

FINRA opened an investigation after it received LZ's complaint in August 2013.²⁴ In connection with the investigation about Quinn's loans from LZ, FINRA staff sent Quinn a series of three requests for information and documents.²⁵ The staff sent each request to Quinn at his residential address recorded in the Central Registration Depository in accordance with FINRA Rule 8210, which requires persons subject to FINRA's jurisdiction to provide information in connection with an investigation. Quinn admits that he did not provide any of the requested information or documents.

II. Conclusions of Law

A. Quinn's Unapproved Loans from LZ

NASD Rule 2370 (which was in effect while Quinn was associated with Wells Fargo) and FINRA Rule 3240²⁶ (which was in effect when Quinn was associated with Stifel Nicolaus) prohibited Quinn from borrowing funds from a non-family member unless his firm had a written procedure allowing such borrowing and preapproved the loan in writing.²⁷ Here, it is undisputed that LZ was not an immediate family member, neither Wells Fargo nor Stifel Nicolaus had

²⁰ CX-9.

²¹ CX-9.

²² Compl. ¶ 14.

²³ CX-12, at 4.

²⁴ CX-13.

²⁵ CX-15 through CX-17.

²⁶ FINRA Rule 3240 superseded NASD Rule 2370, effective June 14, 2010. *See* FINRA Regulatory Notice 10-21 (Apr. 2010).

²⁷ Specifically, a registered representative may borrow funds from a customer if: (i) the firm has a written procedure permitting a loan from a customer; (ii) the lending arrangement is based on a personal relationship between the registered representative and customer such that the loan would not have been solicited, offered, or given had the customer and the representative not maintained a relationship outside of the broker/customer relationship; and (iii) the firm pre-approves the loan in writing. *See* NASD Rules 2370(a) and 2370(b)(1), and FINRA Rules 3240(a) and 3240(b).

procedures permitting LZ's loans to Quinn, and neither firm approved the loans. Thus, we conclude that Quinn violated NASD Rule 2370 while he was associated with Wells Fargo and FINRA Rule 3240 while he was associated with Stifel Nicolaus. Also, we conclude that Quinn thereby violated FINRA Rule 2010, which requires an associated person to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business.²⁸

B. Quinn Submitted a False Annual Certification to Stifel Nicolaus

All securities professionals are subject to "a basic duty ... to respond truthfully and accurately to their firm's requests for information, and ... the failure to do so can be inconsistent with just and equitable principles of trade, especially when the purpose of the information request is to help ensure that the associated person is in compliance with applicable laws, rules, and policies."²⁹ Here, Quinn's false response on his February 2011 compliance certification denying that he had borrowed any funds from his customers³⁰ prevented Stifel Nicolaus from properly overseeing his compliance with FINRA Rule 3240 and identifying his mistreatment of LZ. His misconduct is especially troubling because he had borrowed a significant amount from LZ, an elderly widow with limited resources, and he had defaulted on those loans. We therefore conclude that Quinn violated FINRA Rule 2010.

C. Quinn Failed to Respond to FINRA's Rule 8210 Requests for Information

Rule 8210(a)(1) unequivocally requires a person subject to FINRA's jurisdiction to provide information upon FINRA's request.³¹ Here, Quinn admits that he failed to respond to the three requests FINRA sent to him at his CRD address.³² Quinn offers no explanation for his refusal to comply with the requests. Therefore, we conclude that Quinn violated FINRA Rules 8210 and 2010.

III. Sanctions

A. Quinn's Unapproved Loans from LZ

The FINRA Sanction Guidelines contain no specific guideline applicable to Quinn's borrowing funds from LZ without his firm's prior approval. Thus, the Hearing Panel considered the Sanction Guidelines' principal considerations that are applicable to all sanction

²⁸ Because a violation of an NASD or FINRA rule is inconsistent with just and equitable principles of trade, Quinn's acceptance of the loans also violated FINRA Rule 2010.

²⁹ *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012).

³⁰ CX-12, at 4 (Question 32).

³¹ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *54 (Sept. 24, 2015).

³² Each request sent to Quinn's CRD address by mail is "deemed received" by Quinn. *See* FINRA Rule 8210(d).

determinations.³³ The Hearing Panel also considered Enforcement's recommendation that Quinn be suspended in all capacities for 18 months and fined \$15,000 for this violation and for his false certification to Stifel Nicolaus. The Hearing Panel however will treat the two violations separately because making material misstatements on Stifel Nicolaus' annual compliance certification involves fundamentally different misconduct than failing to obtain prior firm approval of LZ's loans.³⁴

There are a number of aggravating factors that warrant significant sanctions for this violation. First, Quinn violated his firms' procedures. Both Wells Fargo and Stifel Nicolaus had written policies that required its brokers to obtain the firm's approval before they borrowed any money from a customer. Despite these policies, Quinn repeatedly borrowed money from LZ without obtaining his firm's prior approval.³⁵ Second, Quinn knew that LZ (who was then 70 years old) was a widow and that she was investing funds that she had received from a medical malpractice case involving the death of her husband. Third, Quinn did not immediately document five of the first eight loans.³⁶ Fourth, Quinn did not repay any of the loans in full. He made only two payments totaling \$11,600. Wells Fargo settled with LZ for \$25,000, and Stifel Nicolaus paid off her last loan to Quinn of \$3,000. There is no evidence that he repaid any portion of the balance due LZ or that he repaid either firm. Finally, the Hearing Panel notes the continuing nature of Quinn's misconduct. Quinn repeatedly borrowed money from LZ over a term of nearly 15 months.³⁷ His repeated misconduct reveals a deliberate disregard of his firms' procedures and FINRA's rule that restricts associated persons from borrowing from their customers because such transactions present a significant potential for misconduct.³⁸

Considering the foregoing aggravating factors and the lack of mitigating factors, we conclude that the appropriate remedial sanction for this violation is a two-year suspension and a \$20,000 fine.

³³ FINRA Sanction Guidelines at 6-7 (2015), <http://www.finra.org/industry/sanction-guidelines>.

³⁴ See *Dep't of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *71 (NAC Feb. 24, 2011), *aff'd*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

³⁵ Guidelines at 6 (Principal Consideration No. 8).

³⁶ See CX-6.

³⁷ Guidelines at 6 (Principal Consideration No. 3). *Cf. Mullins*, 2012 SEC LEXIS 464, at *81 (finding an absence of aggravating factors where the customer loan was an isolated violation, the loan was repaid in a matter of days, and there was no financial harm).

³⁸ See NASD Notice to Members 03-62 (stressing the importance of complying with NASD Rule 2370 "because of the potential for misconduct").

B. Quinn's False Compliance Certification

FINRA's Sanction Guidelines do not specifically address the submission of false information on a firm's annual compliance questionnaire. Thus, we first considered the Guidelines relating to the falsification of firm records,³⁹ which recommends a fine of \$5,000 to \$146,000 and a suspension of up to two years where mitigation exists, or a bar in egregious cases.⁴⁰ In determining the appropriate sanction, the Guidelines further instructs adjudicators to consider the nature of the falsified document.

We also considered the Guidelines for recordkeeping violations, which have been applied in cases involving misstatements on firm compliance questionnaires.⁴¹ The Guidelines for recordkeeping violations recommends a fine of \$1,000 to \$15,000 and a suspension of up to 30 business days for the responsible individual. In egregious cases, the Guideline recommends a fine of \$10,000 to \$146,000 and a suspension of up to two years, or a bar.⁴²

We find several aggravating factors and no mitigating factors. Quinn engaged in serious misconduct by falsely denying that he had borrowed money from any customer. FINRA member firms use annual compliance questionnaires, such as the one Stifel Nicolaus required Quinn to complete, to assist them in carrying out their supervisory responsibilities. Here, Quinn borrowed \$3,000 from LZ in August 2010 and then failed to disclose the loan just six months later. The close proximity in time leads us to conclude that Quinn intentionally submitted the false certification to conceal his misconduct.

We conclude that the appropriate sanction for submitting the false annual compliance questionnaire is a six-month suspension and a \$10,000 fine. Quinn's material misstatement on Stifel Nicolaus' compliance questionnaire involves fundamentally different misconduct than his failure to obtain prior approval of loans from LZ.⁴³ We therefore conclude that the suspensions for unauthorized borrowing and submitting a false annual compliance questionnaire should run consecutively.

³⁹ See *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *69-70 (NAC July 18, 2014) (citing *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *26-27 (NAC May 13, 2011) (applying the Guidelines related to the falsification of records where the respondent made false statements on firm compliance questionnaires concerning outside brokerage accounts), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

⁴⁰ Guidelines at 37.

⁴¹ See *Mullins*, 2011 FINRA Discip. LEXIS 61, at *66 (applying recordkeeping guideline where respondent submitted a false compliance questionnaire).

⁴² Guidelines at 29.

⁴³ See *Mullins*, 2011 FINRA Discip. LEXIS 61, at *71-72.

C. Quinn's Failure to Respond to FINRA's Rule 8210 Requests for Information

When an associated person does not respond in any manner to a request made pursuant to FINRA Rule 8210, the Sanction Guidelines state that a bar should be standard.⁴⁴ Here, Quinn admits that he did not respond in any manner to Enforcement's requests for information and documents relating to the loans from LZ. Quinn has not offered any evidence of any mitigating factors.

We conclude that a bar is the appropriate sanction for Quinn's failure to respond to the Rule 8210 requests. FINRA properly exercise its self-regulatory role of investigating the allegations concerning his misconduct to determine whether a disciplinary proceeding was warranted. In addition, the information at issue relating to the investigation of serious misconduct and customer harm, thereby raising significant questions about Quinn's fitness to continue as a securities professional.

For the foregoing reasons, we conclude that a bar is the appropriate sanction for his failure to respond to FINRA's Rule 8210 requests for information.

IV. Order

Respondent Andrew Lyman Quinn is barred from associating with any FINRA member firm in any capacity for failing to respond to FINRA's Rule 8210 requests for information, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.⁴⁵

We conclude that Quinn's violation for borrowing funds from a customer without first obtaining his firms' approval of the transaction merits a \$20,000 fine and two-year suspension in all capacities, and that his submission of a false compliance certification to his firm merits a \$10,000 fine and a six-month suspension in all capacities. We decline to impose these fines or suspensions in light of the bar that we imposed on him.

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

⁴⁴ Guidelines at 33.

⁴⁵ The Hearing Panel considered and rejected without discussion all other arguments by the parties.