

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VICTOR MANUEL OLIVO  
(CRD No. 2159064),

Respondent.

Disciplinary Proceeding  
No. 20090172901

Hearing Officer – MC

**DEFAULT DECISION**

March 23, 2010

**Respondent is barred from associating with any FINRA member firm in any capacity for engaging in trading that was not authorized by his FINRA member firm employer, in violation of Conduct Rule 2110, and for failing to appear for on-the-record testimony, in violation of Conduct Rule 2010 and Procedural Rule 8210.**

**Appearances**

Peter E. Schlossman, Senior Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent Victor Manuel Olivo.

**DECISION**

**I. Introduction**

On November 25, 2009, the Department of Enforcement filed the attached two-cause Complaint in this disciplinary proceeding. The first Cause of Action of the Complaint alleges that Respondent Victor Manuel Olivo (“Olivo”) improperly, and without authorization from his FINRA member firm employer, used an account to hold open foreign currency transactions that

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caused his firm financial loss, in violation of Conduct Rule 2110.<sup>1</sup> The second Cause of Action of the Complaint alleges that Olivo failed to provide on-the-record testimony after FINRA staff, pursuant to Procedural Rule 8210, twice requested that he do so in connection with an investigation into his unauthorized trading activity, in violation of Conduct Rule 2010 and Procedural Rule 8210.

Olivo failed to file an Answer or otherwise respond to the Complaint. Consequently, on January 29, 2010, Enforcement filed a Motion for Entry of a Default Decision (“Default Motion”) supported by the Declaration of Peter E. Schlossman and eight exhibits.<sup>2</sup> Because of Olivo’s failure to reply to the Default Motion, and for the reasons discussed below, the Default Motion is granted.<sup>3</sup>

## **II. Findings of Fact and Conclusions of Law**

### **A. Olivo is Subject to FINRA’s Jurisdiction**

Olivo first became associated with a FINRA member firm in 1991. Shortly thereafter, Olivo left the securities industry, returning in 2002 as a product specialist at Citigroup Global Markets Inc. (“Citigroup”), where he became registered as a general securities representative in 2004. Olivo voluntarily resigned from Citigroup on January 20, 2009.<sup>4</sup> Olivo is no longer

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<sup>1</sup> As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Olivo’s alleged misconduct. The applicable rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> Enforcement’s exhibits will be referred to as “CX-” with the appropriate exhibit number. References in this Default Decision to the Declaration will be referred to as “Decl.” or “Schlossman Declaration” with citation to specific paragraphs.

<sup>3</sup> The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Schlossman Declaration, and the exhibits filed by Enforcement.

<sup>4</sup> Decl. ¶ 5; CX-1.

associated with a FINRA member firm.<sup>5</sup> Nonetheless, pursuant to Article V, Section 4 of FINRA'S By-Laws, FINRA retains jurisdiction over Olivo for the purposes of this disciplinary proceeding because the Complaint was issued less than two years after Olivo was last registered.

**B. Olivo Defaulted**

On November 25, 2009, Enforcement served the Complaint and Notice of Complaint on Olivo by certified mail at his residential address appearing in the Central Registration Depository ("CRD address"). Enforcement also sent a copy of the Complaint to Olivo's attorney. The receipt from the certified mailing was signed by Olivo on December 10, 2009, and returned to FINRA.<sup>6</sup> Olivo did not file an Answer to the Complaint.<sup>7</sup> Enforcement served the Complaint and Second Notice of Complaint on Olivo by certified mail, again at his CRD address, on December 29, 2009, and sent a copy to Olivo's attorney. Once more, the receipt from the certified mailing was returned to FINRA, signed by Olivo and dated January 11, 2010.<sup>8</sup> Olivo's attorney sent a letter to FINRA staff, dated January 21, 2010, stating that Olivo would not respond formally to the Complaint.<sup>9</sup>

Olivo's signature on the receipts for the certified mailings of the Complaint, and the letter from his attorney, confirm that Olivo received actual notice of the filing of the Complaint. Enforcement has therefore fully complied with the service requirements of Procedural Rule 9134. By failing to answer the Complaint, Olivo has defaulted. Accordingly, pursuant to Rules

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<sup>5</sup> Decl. ¶ 6.

<sup>6</sup> *Id.*, ¶ 18; CX-6.

<sup>7</sup> Decl. ¶ 18.

<sup>8</sup> *Id.*, ¶ 19; CX-7.

<sup>9</sup> *Id.*, ¶ 19; CX-8.

9215(f) and 9269(a)(2), the allegations against Olivo contained in the Complaint are deemed admitted.

**C. Olivo Placed Trades in an Account Without His Firm's Authorization, in Violation of Conduct Rule 2110**

At Citigroup, Olivo was a specialist on the Capital Markets Desk where he was in charge of Fixed Income, Currencies and Commodities for the Latin America section of the Desk.<sup>10</sup> In that capacity, Olivo was primarily engaged in advising Latin American clients on foreign exchange and products related to foreign exchange.<sup>11</sup> The Capital Markets Desk was not designed to place proprietary trades or to hold open positions.<sup>12</sup> Trades entered by Capital Markets Desk employees were to have been entered on another trading desk's book.<sup>13</sup> Between November 2007 and November 2008, however, Olivo placed numerous foreign currency transactions on behalf of customers into a suspense account created by the Capital Markets Desk to hold certain overnight trades. Olivo did not record these transactions, leaving Citigroup unaware of them.<sup>14</sup> Olivo was not authorized to use the suspense account in this manner, and did not notify anyone at Citigroup about these positions or seek permission to hold them in the suspense account.<sup>15</sup> In March 2009, two months after Olivo left the firm, Citigroup discovered that approximately 200 of the unauthorized trades Olivo had placed in the suspense account were

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<sup>10</sup> Decl. ¶ 7.

<sup>11</sup> Complaint ¶ 6.

<sup>12</sup> Decl. ¶ 8.

<sup>13</sup> *Id.*, ¶ 9.

<sup>14</sup> Complaint, ¶ 10.

<sup>15</sup> *Id.*, ¶ 11.

still open and were causing financial losses to Citigroup.<sup>16</sup> By using the account to place these trades without authorization, Olivo violated Conduct Rule 2110.

**D. Olivo Failed to Appear to Provide On-the-Record Testimony, in Violation of Conduct Rule 2010 and Procedural Rule 8210**

Enforcement sent a letter on May 20, 2009, by certified and first-class mail to Olivo's CRD address requesting that he appear to provide on-the-record testimony on June 25, 2009, at FINRA's offices in Washington, DC. The receipt for the certified mailing was returned, signed by Olivo and dated May 23, 2009.<sup>17</sup> Subsequently, on June 19, 2009, Olivo's attorney sent a letter to FINRA by facsimile in which he stated that Olivo would not appear at the scheduled interview.<sup>18</sup> On the date of the scheduled interview, the attorney informed FINRA staff by telephone that Olivo would not cooperate with the investigation. Olivo did not appear at the interview.<sup>19</sup>

Enforcement sent another letter on July 1, 2009, by certified and first-class mail, to Olivo's CRD address requesting, pursuant to Procedural Rule 8210, that Olivo appear at FINRA's Washington, DC offices to provide on-the-record testimony on July 23, 2009. Once again, the return receipt for the certified mailing was returned, signed by Olivo.<sup>20</sup> Olivo failed to appear at the interview on July 23, 2009, and has not subsequently contacted FINRA staff.<sup>21</sup> By

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<sup>16</sup> Complaint ¶¶ 12-13.

<sup>17</sup> Decl. ¶ 15; CX-3.

<sup>18</sup> *Id.*, ¶ 16; CX-4.

<sup>19</sup> Decl. ¶ 16.

<sup>20</sup> *Id.*, ¶ 17; CX-5.

<sup>21</sup> Decl. ¶ 17.

his failure to appear at the scheduled interviews, of which he was properly notified pursuant to Procedural Rule 8210, Olivo violated Conduct Rule 2010 and Procedural Rule 8210.

### **III. Sanctions**

Enforcement requests the imposition of a bar from association in any capacity with any FINRA member firm as the appropriate sanction for each cause of action in the Complaint.

#### **A. Engaging in Unauthorized Trading in Violation of Conduct Rule 2110**

Enforcement notes that the FINRA Sanction Guidelines do not address the type of unauthorized trading in which Olivo engaged in this case. The Guideline pertaining to unauthorized transactions, which ordinarily involve trading without a customer's authorization, calls for a suspension for up to two years, or a bar, in egregious cases.<sup>22</sup> Because of the seriousness of Olivo's misconduct, which resulted in financial harm to Citigroup, a bar is the appropriate sanction to impose upon Olivo for engaging in trading that was unauthorized by Citigroup.

#### **B. Failure to Provide On-the-Record Testimony in Violation of Conduct Rule 2010 and Procedural Rule 8210**

The FINRA Sanction Guidelines call for a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.<sup>23</sup> Noting the absence of mitigating factors, Enforcement recommends imposition of a bar in this case.

Here, Enforcement repeatedly sought to obtain Olivo's on-the-record testimony in order to investigate serious allegations of misconduct. Olivo, however, simply refused to appear.

As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations... Procedural Rule 8210 gives

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<sup>22</sup> *FINRA Sanction Guidelines*, p. 103 (2007).

<sup>23</sup> *Id.*, p. 35.

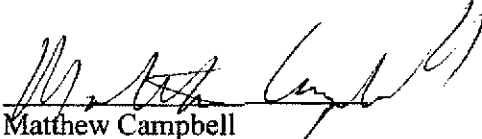
[FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information.”<sup>24</sup> Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”<sup>25</sup>

A bar, therefore, is the appropriate sanction for Olivo’s failure to respond in any manner to requests made to him, pursuant to Procedural Rule 8210, to provide information essential to the investigation of this case.

#### IV. Order

Respondent Victor Manuel Olivo is barred from association with any FINRA member firm in any capacity for: (i) engaging in trading that was not authorized by his FINRA member firm employer, in violation of Conduct Rule 2110; and (ii) failing to appear for on-the-record testimony, in violation of Conduct Rule 2010 and Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA’s final disciplinary action in this proceeding.

**SO ORDERED.**

  
Matthew Campbell  
Hearing Officer

Copies to: Victor M. Olivo (*via FedEx and first-class mail*)  
Peter E. Schlossman, Esq. (*via electronic and first-class mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)

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<sup>24</sup> *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at \*35 - \*36 (N.A.C. Dec. 18, 2006).

<sup>25</sup> *Id.* at \*41.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

V.

Victor Olivo (CRD No. 2159064),

Respondent.

DISCIPLINARY PROCEEDING  
No. 20090172901

**COMPLAINT**

The Department of Enforcement alleges:

1. Respondent Victor Olivo ("Respondent" or "Olivo") became registered as a general securities representative (Series 7) in 2004, at Citicorp Investment Services. He subsequently transferred to Citigroup Global Markets Inc. in May 2007 ("Citigroup" or "Firm"), in New York City, and was employed at Citi Private Bank, a non-brokerage business within Citigroup Inc.
2. On January 20, 2009, Respondent Olivo voluntarily resigned from Citigroup as part of a staff reduction. Respondent Olivo has not been associated with any FINRA member or registered with FINRA in any capacity since that time.
3. Pursuant to Article V, Section 4 of the NASD By-Laws, FINRA retains jurisdiction over Respondent.

**FIRST CAUSE OF ACTION**

**UNAUTHORIZED TRADING IN VIOLATION  
OF NASD CONDUCT RULE 2110**

4. The Department realleges and incorporates by reference paragraphs 1-3 above.

5. Olivo was in charge of Fixed Income, Currencies and Commodities for the Latin America section of the Capital Markets Desk at Citi Private Bank. The Capital Markets Desk provided sales support to Private Bankers at the Firm whose clients traded foreign currencies in addition to utilizing other Firm products.

6. Olivo was a specialist on the Capital Markets Desk. He spent most of his time advising Latin American clients on foreign exchange and foreign exchange-related products.

7. The Capital Markets Desk was not designed to place proprietary trades or hold open positions. Instead, the Citigroup employees working on the Capital Markets Desk were intermediaries between the Firm's Private Bankers and customers on the one hand, and the Firm's Institutional Client's Group Desk, on the other hand.

8. The Institutional Client's Group Desk was the entity at the Firm designed to place trades for Private Bankers and their customers. While the employees on the Capital Markets Desk could enter trades in the Firm's system, the pricing for those trades was supposed to come from the Institutional Client's Group Desk and the trades should have been entered on the Institutional Client's Group Desk's book.

9. The Capital Markets Desk established a trade error account in November 2007. It was subsequently used as a suspense account to temporarily hold certain overnight trades. It was not designed to hold proprietary positions.

10. Between November 2007 and November 2008, Respondent Olivo placed numerous foreign currency transactions on behalf of the Citi Private Bank Latin America customers, or in connection with their trading, in the suspense account. These trades were not recorded in the Institutional Client's Group Desk's book or any of its accounts.

11. Respondent was not authorized or otherwise permitted to place these trades in the suspense account. He failed to notify anyone at the Firm about these positions or seek permission to hold them in the suspense account. Olivo's surreptitious conduct in maintaining these positions violated Firm policy and caused the Firm to experience significant financial losses.

12. In November 2008, Respondent Olivo accepted a severance package and left the firm. In March 2009, Citi Private Bank discovered that approximately 200 of the trades Olivo had placed in the suspense account were still open.

13. As of early March 2009, the open foreign currency positions placed in the suspense account by Respondent Olivo caused losses of about \$22 million to the bank.

14. By reason of the foregoing, Respondent Olivo violated NASD Conduct Rule 2110.

**SECOND CAUSE OF ACTION**

**FAILURE TO APPEAR FOR ON-THE-RECORD INTERVIEW  
VIOLATION OF FINRA CONDUCT RULE 2010 AND  
FINRA PROCEDURAL RULE 8210**

15. The Department realleges and incorporates by reference paragraphs 1-14 above. In a letter dated May 20, 2009, sent by certified and United States mail to Respondent Olivo's Central Registration Depository ("CRD") address pursuant to Rule 8210, the Department scheduled Respondent Olivo's on-the-record testimony pursuant to Rule 8210 for June 25, 2009, in FINRA's Washington, D.C. Enforcement office.

16. Respondent Olivo signed for the letter on May 23, 2009. The letter requested Olivo to call Staff by May 27, 2009 to confirm his availability to appear for testimony. Olivo never called Staff.

17. On June 19, 2009, an attorney representing Respondent faxed a letter to FINRA Enforcement stating that Olivo would "not be appearing before FINRA on June 25, 2009."

18. Respondent Olivo did not appear at the Washington, D.C. office on June 25, 2009 for his testimony, as requested.

19. On June 25, 2009, Respondent Olivo's attorney confirmed with Enforcement Staff that Respondent would not cooperate with Staff's investigation of this matter.

20. The Department sent Respondent Olivo a second Rule 8210 request, dated July 1, 2009, by certified and United States mail pursuant to Rule 8210, scheduling his testimony for

July 23, 2009, in FINRA's Washington, D.C. Enforcement office. Respondent Olivo signed for the letter, but did not date it.

21. Respondent Olivo did not appear at the Washington, D.C. office on July 23, 2009 for his testimony, as requested.

22. As Respondent Olivo failed to appear for testimony on both June 25, 2009 and July 23, 2009, and no adjournment was requested or granted, he violated FINRA Conduct Rule 2010 and FINRA Procedural Rule 8210.

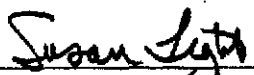
### **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

### **FINRA DEPARTMENT OF ENFORCEMENT**

Date: 11/25/09

  
Susan Light, Senior Vice President & Chief  
Counsel  
Lane Thurgood, Director  
Peter Schlossman, Senior Counsel  
FINRA Department of Enforcement  
1801 K Street NW, 8<sup>th</sup> floor  
Washington, D.C. 20006  
(202) 974-2720; Fax: (202) 721-8335