

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PETER M. PETERSON
(CRD No. 2825535),

Respondent.

Disciplinary Proceeding
No. 2009017968701

Hearing Officer – LBB

DEFAULT DECISION

Dated: July 1, 2011

Respondent is barred from associating with any member firm in any capacity for failing to produce documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Sean W. Firley, Esq., Senior Regional Counsel, Boca Raton, Florida, for the Department of Enforcement.

Peter M. Peterson, *pro se*.

DECISION

The Department of Enforcement (“Enforcement”) filed a one-cause Complaint in this disciplinary proceeding on October 8, 2010, charging Peter M. Peterson (“Respondent”) with failing to respond to requests for documents, thereby violating FINRA Procedural Rule 8210 and Conduct Rule 2010. As discussed below, Respondent failed to respond to the Complaint after being properly served, and Enforcement filed a motion for entry of default decision (“default motion”). The Hearing Officer then issued a show-cause order, and Respondent filed a letter response to the Complaint. Finding that the letter response did not meet the requirements of FINRA Procedural Rule 9215, the Hearing Officer ordered Respondent to file a proper answer, which Respondent has failed to do. Respondent has also failed to respond to a show-cause order

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concerning his failure to comply with the order to file an amended answer. Enforcement has filed a supplement to its original default motion, setting forth the events supporting the entry of a default that have occurred since Enforcement's original default motion.

Accordingly, pursuant to FINRA Procedural Rules 9215(f), 9269, and 9280, Enforcement's default motion is granted, and the allegations of the Complaint are deemed admitted.¹

I. Jurisdiction

At the time of the filing of the Complaint, Respondent was registered with FINRA member firm Pointe Atlantic, Inc. Complaint ¶ 4. Accordingly, pursuant to Article V, Section 2 of FINRA's By-Laws, Respondent was subject to FINRA's jurisdiction at the time of the filing of the Complaint, and remains subject to FINRA's jurisdiction.

II. Respondent's Default

On October 8, 2010, Enforcement served the Complaint and Notice of Complaint on Respondent at his residential address, as listed in the Central Registration Depository ("CRD address"). Decl. ¶ 12. Respondent failed to file an answer to the Complaint. On November 8, 2010, Enforcement served a Second Notice of Complaint on Respondent at his CRD address. Complaint ¶ 16. Respondent did not file an answer to the Second Notice of Complaint within the time period prescribed by Rule 9215(f).

The Hearing Officer issued an Order Setting Deadline for Filing Motion for Entry of Default Decision on December 1, 2010, and Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions on December 28, 2010. Respondent did not respond to the

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration Supporting of Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____."

motion. On February 9, 2011, the Hearing Officer issued an Order to Show Cause and Order Scheduling Pre-Hearing Conference. Respondent filed a one-page response to the Complaint on February 15, 2011, asserting that the Rule 8210 requests that are the subject of this proceeding were invalid because they sought documents from a company that was not a FINRA member firm, and stating that a default should not be entered against him.

On February 22, 2011, Enforcement filed a Motion to Direct Respondent to File Amended Answer to the Complaint that Complies with Rule 9215. A pre-hearing conference was conducted on March 4, 2011, at which Respondent represented that he was in the process of retaining counsel. The Hearing Officer granted Enforcement's motion to direct Respondent to file an amended answer by Order dated March 23, 2011, finding that Respondent's letter response to the Complaint did not comply with the requirements for an answer set forth in Rule 9215(b), and directing Respondent to file an amended answer by April 8, 2011. Respondent failed to file an amended answer, and on May 4, 2011, the Hearing Officer issued an Order to Show Cause, directing Respondent to show cause why a default decision should not be entered. Respondent failed to respond to the Order to Show Cause. By failing to file an amended answer, and failing to respond to the Order to Show Cause, Respondent defaulted.

III. Respondent Violated FINRA Procedural Rule 8210 and Conduct Rule 2010 by Failing to Provide Documents

A. Respondent Failed to Provide Documents Requested Pursuant to FINRA Procedural Rule 8210

Respondent is the president, chief executive officer, and chief compliance officer of Pointe Atlantic. Pointe Atlantic's Form BD discloses that Aspen Capital Partners, LLC, which is not a FINRA member, owns 100% of Pointe Atlantic. Complaint ¶ 5. Respondent owns 100% of Aspen Capital, and is thus the control person for both Pointe Atlantic and Aspen Capital.

Complaint ¶ 7. The violation charged in the Complaint occurred while Respondent was associated with Pointe Atlantic. Complaint ¶ 7.

In order to investigate certain customer Complaints regarding Aspen Capital and Respondent individually, beginning in May 2009, the staff conducted an onsite examination of Pointe Atlantic. Because Aspen Capital's documents are maintained primarily at the same location as Pointe Atlantic, the staff sought documents from Peterson, Aspen Capital, and Pointe Atlantic. Complaint ¶ 9.

Request dated May 28, 2009

During its onsite examination, the staff hand-delivered a Rule 8210 letter, dated May 28, 2009, to Respondent, who acknowledged receipt of the letter by signing it. Complaint ¶ 10. Pursuant to Rule 8210, the staff requested, among other things, that Respondent immediately make available for inspection and copying various documents, including Aspen Capital's e-mails for the time period of May 28, 2008, through May 28, 2009. Respondent did not produce the e-mails while the staff was onsite, but later produced the Pointe Atlantic e-mails. He has never produced the Aspen Capital e-mails requested by the May 28 request. Complaint ¶ 11-12.

Request dated June 2, 2009

On June 2, 2009, pursuant to Rule 8210, the staff sent a letter to Respondent by first-class and certified mail at his CRD address, and to Pointe Atlantic's office. The request was also sent by fax to Respondent at Pointe Atlantic on the same date. Complaint ¶¶ 13-14. The June 2, 2009, request also directed Respondent to produce, among other things, the requested e-mails on or before June 12, 2009. Complaint ¶ 15. On June 19, 2009, Respondent responded in writing to the June 2 request. He answered certain requests for information about Aspen Capital's business purpose, clients, employees, and financial records. His response questioned whether FINRA had jurisdiction over Aspen Capital, and stated that he would be happy to

review any authority that supported the proposition that Aspen Capital's e-mails should be produced pursuant to FINRA's Rules. Complaint ¶ 16.

Soon after the staff received Respondent's June 19 letter, the staff was contacted by an attorney who informed the staff that he represented Respondent. The staff directed Respondent's counsel to review certain authorities supporting its position that it was entitled to the Aspen Capital e-mails. Complaint ¶ 17. Respondent did not provide any of the Aspen Capital e-mails. Complaint ¶ 18.

Request dated July 16, 2009

On July 16, 2009, the staff sent Respondent's counsel a letter by first-class and certified mail, again requesting Aspen Capital's e-mails. Complaint ¶ 19. On August 3, 2009, Respondent responded in writing to the July 16 request. Although Respondent responded to certain of the staff's requests about Aspen Capital's purchase contracts with customers and the purpose of the contracts, Respondent continued to question whether FINRA had jurisdiction over Aspen Capital and stated again that he would be willing to review any authority standing for the proposition that Aspen Capital's e-mails should be produced pursuant to FINRA's Rules. Shortly after receipt of Respondent's letter of August 3, 2009, the staff contacted Respondent's counsel and directed him to review certain authorities. Complaint ¶ 20; Decl. ¶ 11.

**Respondent's Investigative Testimony, the Request dated October 1, 2009,
and Subsequent Staff Onsite Visit**

On September 2, 2009, pursuant to Rule 8210, the staff requested that Respondent appear at FINRA's Florida District Office for investigative testimony. Respondent appeared for the testimony on September 30, 2009. Complaint ¶¶ 21-22. During his investigative testimony, Respondent acknowledged that he had possession, custody, and control of Aspen Capital's e-mails, and agreed to provide the staff with all of Aspen Capital's e-mails for the requested time

period. He explained that he was extremely busy, and suggested that the staff come to the Pointe Atlantic office to assist with the collection of the e-mails. Complaint ¶¶ 23-24.

In preparation for the onsite visit, pursuant to Rule 8210, on October 1, 2009, the staff sent a letter to Peterson's counsel, again seeking production of Aspen Capital's e-mails and requiring a response by October 15, 2009. On October 6, 2009, the staff arrived at Pointe Atlantic's office to assist Respondent with his effort to collect the requested e-mails. When the staff asked to review Aspen Capital's e-mails, Respondent refused to produce them, claiming that they needed to be reviewed for attorney-client privilege and work product. Respondent would not allow the staff to review the e-mails but allowed them to copy all Aspen Capital e-mails for Respondent and his assistant to disks. Once the e-mails were copied to disks, Respondent instructed the staff to send them under sealed cover to Respondent's counsel. Complaint ¶¶ 25-26.

The sealed package instructed Respondent's counsel not to open the package. Respondent informed the staff that his counsel would not perform the privilege review, but that Respondent and his assistant would do so. On October 15, 2009, Respondent contacted the staff by telephone and requested a one-week extension until October 22, 2009, to complete his privilege review. The staff granted the extension. Respondent failed to produce any of the e-mails by October 22, 2009, and no further extensions were sought. Complaint ¶¶ 27-29.

On October 23, 2009, the staff contacted Respondent's counsel, who informed the staff that he no longer represented Respondent, and instructed the staff to contact Respondent directly. On October 28, 2009, the staff contacted Respondent by telephone regarding his failure to produce the requested e-mails. Respondent informed the staff that his review was almost complete, and that he only needed to "confirm the specifics" with his assistant. Respondent

never provided the e-mails despite additional follow-up telephone calls to Respondent by the staff on November 18, 2009, and February 9, 2010. Complaint ¶¶ 30-31.

Request dated May 3, 2010

On May 3, 2010, pursuant to Rule 8210, the staff sent a final request for documents to Respondent by first-class and certified mail at his CRD address. The request was also sent by facsimile to Respondent at Pointe Atlantic. The May 3 request directed Respondent to produce the requested e-mails by May 14, 2010. Respondent has not produced any of the requested Aspen Capital e-mails. Complaint ¶¶ 32-34.

B. Respondent's Failures to Provide Documents Violated FINRA Procedural Rule 8210 and Conduct Rule 2010

Respondent's assertions to FINRA staff, and in his letter response to the Complaint, that he was not required to produce Aspen Capital e-mails because Aspen Capital is not a member firm, is incorrect, and does not provide a defense to the charge in the Complaint.

FINRA Procedural Rule 8210(a)(2) provides that, for purposes of an investigation, FINRA staff has the right to inspect and copy the books and records of a person associated with a member with respect to any matter involved in the investigation. Article I(rr)(3) of FINRA's By-Laws provides that, for purposes of Rule 8210, "person associated with a member" includes "any ... person listed in Schedule A of Form BD of a member. ..." In 1999, FINRA changed the definition of "person associated with a member" in the By-Laws to its current language, explaining that the revised definition "gives the staff the authority to require information and testimony under Rule 8210 from any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm...." NTM 99-95. As noted above, Pointe Atlantic's Form BD identifies Aspen Capital as the firm's owner. In addition, Respondent controls Aspen Capital, and he has possession, custody and control of the documents

requested by FINRA staff. Under FINRA's By-Laws, Aspen Capital is an associated person, and FINRA can require the production of its documents pursuant to Rule 8210. Under these circumstances, Respondent is required to produce the documents requested pursuant to Rule 8210.²

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision that Respondent failed to provide documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210. A violation of FINRA Procedural Rule 8210 is also a violation of FINRA Conduct Rule 2010.³

IV. Sanctions

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. Where the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.⁴ Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years.

Respondent refused to provide the Aspen Capital documents despite receiving five requests for the documents. There are no mitigating factors. A bar is the appropriate sanction.

² *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *25 (Jan. 30, 2009) (In a case in which respondent was the president of a non-member firm, the SEC held that he was required to produce documents, without finding that the non-member was an associated person. "[Respondent] failed to establish that he did not have access to and control over responsive documents in possession of [non-member firm] since he was that firm's CEO and president.")

³ *Dep't of Enforcement v. Hoepfer*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

⁴ *FINRA Sanction Guidelines* 33 (2011).

V. Conclusion

Respondent Peter M. Peterson is barred from associating with any member firm in any capacity for failure to produce documents, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Peter M. Peterson (*via first-class and overnight courier*)
Sean W. Firley, Esq. (*via first-class and electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

vs.

PETER M. PETERSON (CRD No.
2825535),

Respondent.

Disciplinary Proceeding
No. 20090179687

Hearing Officer – TBD

COMPLAINT

The Department of Enforcement alleges:

Summary

1. In violation of FINRA Rules 8210 and 2010, Peter M. Peterson (“Peterson”) failed to respond to the FINRA Florida District Office Staff’s (Staff”) multiple requests for documents and information. Specifically, the Staff was investigating complaints alleging conversion involving stock purchase and repurchase contracts that were executed between Aspen Capital Partners, LLC (“Aspen Capital”) and the complaining individuals. Aspen Capital is the sole owner of FINRA member Pointe Atlantic, Inc., of which Peterson is President, CEO and Chief Compliance Officer. In order for the Staff to investigate the complaints, it was crucial to collect Aspen Capital’s emails. Despite numerous requests for the emails, Peterson delayed the Staff’s investigation, promising at one point to produce the emails after conducting a review for attorney-client privilege. Ultimately Peterson never produced the emails to the Staff. Peterson’s delays and broken promises impeded the Staff’s investigation of the complaints.

Respondent, Jurisdiction and Related Parties

2. In January 1997, Peterson became registered with FINRA (f/k/a NASD) as a General Securities Representative (Series 7). In May 1997, he acquired a Series 63 license. In June 1999, he acquired a Series 24 license.

3. Between January 1998 and February 2007, Peterson was associated with several FINRA members.

4. Peterson is currently associated with Pointe Atlantic, Inc. ("Pointe Atlantic"), a FINRA member. Peterson is also Pointe Atlantic's President, Chief Executive Officer and Chief Compliance Officer.

5. Aspen Capital, a non-FINRA member, is the 100 percent owner of Pointe Atlantic as reflected on Pointe Atlantic's Form BD. Accordingly, Aspen Capital is an associated person pursuant to Article I(rr)(3) of FINRA's By-Laws.

6. Peterson is the 100 percent owner of Aspen Capital and is thus the control person for both Pointe Atlantic and Aspen Capital.

7. The violations alleged herein occurred while Peterson was associated with Pointe Atlantic. Moreover, Peterson is currently registered with Pointe Atlantic and is therefore subject to FINRA's jurisdiction.

Cause of Action

Failure to Respond to Requests for Documents and Information Violations of FINRA Rules 8210 and 2010

8. The Department realleges and incorporates Paragraphs 1 through 8 by reference.

9. In order to investigate certain customer complaints regarding Aspen Capital and Peterson individually, beginning in May 2009, the Staff conducted an onsite examination of Pointe Atlantic. Due to the fact that Aspen Capital's documents are maintained primarily at the

same location as Pointe Atlantic, the Staff sought documents from Peterson, Aspen Capital and Pointe Atlantic.

May 28 Request

10. During its onsite examination, the Staff hand-delivered a Rule 8210 letter, dated May 28, 2009, to Peterson, who acknowledged receipt of the letter by signing the same ("May 28 Request").

11. In its May 28 Request, the Staff, pursuant to FINRA Rule 8210, requested, among other things, that Peterson immediately make available for inspection and copying various documents, including the emails of Aspen Capital for the time period of May 28, 2008 through May 28, 2009.

12. Aspen Capital's emails were not produced to the Staff while they were onsite at Pointe Atlantic.¹

June 2 Request

13. After Peterson failed to produce the requested emails to the Staff, on June 2, 2009, pursuant to FINRA Rule 8210, the Staff sent Peterson a letter by first class and certified mail to his residential address reflected in the Central Registration Depository ("CRD Address") and to Pointe Atlantic's office ("June 2 Request").²

14. The June 2 Request was also sent via facsimile to Peterson at Pointe Atlantic on the same date.

¹ Ultimately, the documents sought from Pointe Atlantic were produced to the Staff. After the onsite visit, Peterson also produced certain financial documents of Aspen Capital, but Aspen Capital's emails were never provided.

² The green card for the June 2 Request sent to Peterson at his CRD Address was returned to the Staff with the signature of "Nancy Peterson", reflecting a delivery date of June 8, 2009. The green card for the June 2 Request sent to Peterson at Pointe Atlantic's main office by certified mail was returned with an illegible signature reflecting delivery on June 9, 2009. The first class mailings were not returned.

15. The June 2 Request again sought Peterson to produce, among other things, the previously requested emails on or before June 12, 2009.

16. On June 19, 2009, Peterson responded in writing to the June 2 Request. While Peterson answered certain requests for information about Aspen Capital's business purpose, clients, employees and financial records, Peterson questioned whether FINRA had jurisdiction over Aspen Capital and stated that he would be happy to review any authority standing for the proposition that Aspen Capital's emails should be produced pursuant to applicable FINRA rules.

17. Shortly after receipt of the letter from Peterson, the Staff was contacted by an attorney who informed the Staff that he represented Peterson. The Staff directed counsel to review certain authorities supporting its position that it was entitled to the Aspen Capital emails.³

18. Despite the Staff's having provided counsel with those authorities, as well as the provisions of FINRA Rule 8210, neither Peterson nor counsel provided any of the requested emails of Aspen Capital.

July 16 Request

19. After Peterson's continued failure to produce Aspen Capital's emails, pursuant to Rule 8210, on July 16, 2009, the Staff sent Peterson's counsel a letter by first class and certified mail again requesting Aspen Capital's emails for the third time ("July 16 Request").

20. On August 3, 2010, Peterson responded in writing to the July 16 Request. Although Peterson responded to certain of the Staff's requests about Aspen Capital's purchase contracts with customers and the purpose for the contracts, Peterson continued to question whether FINRA had jurisdiction over Aspen Capital and stated again that he would be willing to review any authority standing for the proposition that Aspen Capital's emails should be produced

³ Peterson had previously disclosed Aspen Capital as an outside business activity on his Form U4.

pursuant to applicable FINRA rules. Shortly after receipt of Peterson's August 3, 2010 letter, the Staff contacted counsel by telephone and again directed him to review certain authorities.

**Peterson's Investigative Testimony, the October 1 Request and
Subsequent Staff Onsite Visit**

21. On September 2, 2009, after Peterson's continued failure to produce Aspen Capital's emails, pursuant to FINRA Rule 8210, the Staff requested that Peterson appear at FINRA's Florida District Office on September 30, 2009 for investigative testimony.

22. On September 30, 2009, Peterson appeared for investigative testimony.

23. During his investigative testimony, Peterson, who was represented by counsel, acknowledged that he had possession, custody and control of Aspen Capital's emails and further agreed to provide the Staff with all of Aspen Capital's emails for the requested time period.

24. Peterson explained that with the end of the year approaching, he was extremely busy and suggested to the Staff that production of Aspen Capital's emails would be much faster if the Staff arrived onsite at Pointe Atlantic again and assisted with the effort to collect the emails.

25. As a follow up to Peterson's investigative testimony and in preparation for the Staff's onsite visit to Pointe Atlantic, pursuant to Rule 8210, on October 1, 2009, the Staff sent Peterson's counsel a letter by first class and certified mail, again seeking production of Aspen Capital's emails and requiring a response by October 15, 2009 ("October 1 Request").

26. On October 6, 2009, based on Peterson's stated willingness to provide access to Aspen Capital's emails, the Staff arrived onsite at Pointe Atlantic to assist Peterson with his effort to collect the requested emails. When the Staff requested to review Aspen Capital's emails, Peterson, however, refused to produce them, now claiming that they needed to be reviewed for attorney-client work product privilege. Peterson would not allow the Staff to review the emails

but allowed them to copy all Aspen Capital emails for Peterson and his assistant to disks. Once the emails were copied to disks, Peterson instructed the Staff to send them under sealed cover to Peterson's counsel.

27. The sealed package instructed counsel not to open the package. Peterson informed the Staff that his counsel would not perform the privilege review, but that he and his assistant would do so. Peterson claimed that his counsel was merely safeguarding the disks so that they could be referenced by the Staff at a later date.

28. On October 15, 2009, Peterson contacted the Staff by telephone and requested a one-week extension until October 22, 2009 to complete his privilege review of Aspen Capital's emails.

29. The Staff granted Peterson this extension. However, Peterson still failed to produce any of the requested emails by October 22, 2009, and no further extension was sought by Peterson or his counsel.

30. On October 23, 2009, the Staff contacted counsel, who informed the Staff that he was no longer representing Peterson. Counsel instructed the Staff to contact Peterson directly regarding the email production.

31. On October 28, 2009, the Staff contacted Peterson by telephone regarding his failure to provide the requested emails. Peterson informed the Staff that he was "almost done" with the privilege review and only needed to "confirm the specifics" with his assistant. Peterson never provided the requested emails despite additional follow-up phone calls to Peterson by the Staff on November 18, 2009 and February 9, 2010.

May 3 Request

32. After Peterson's continued failure to produce Aspen Capital's emails, on May 3, 2010, pursuant to Rule 8210, the Staff sent Peterson a final letter by first class and certified mail to his CRD Address ("May 3 Request"). The May 3rd Request was also transmitted via facsimile to Peterson at Pointe Atlantic.⁴

33. The May 3 Request again sought Peterson to produce the requested emails and outlined a chronology of all of the prior requests and failures to produce Aspen Capital's emails.

34. The May 3 Request required Peterson to provide a response on or before May 14, 2010.

35. Despite multiple Staff requests and Peterson's promise to produce them, Peterson never produced any of the requested emails of Aspen Capital.

36. Peterson's failure to produce the requested emails has impeded the Staff's investigation.

37. By failing to provide any responsive emails as requested by the Staff on May 28, 2009, June 2, 2009, July 16, 2009, October 1, 2009 and May 3, 2010, Peterson violated FINRA Rules 8210 and 2010.

⁴ The green card for the May 3 Request sent to Peterson by certified mail to his CRD Address was returned to the Florida District with the signature of "N. Peterson", reflecting a delivery date of May 6, 2010. The first class mailings to Peterson's CRD Address and Pointe Atlantic were not returned to the Florida District.

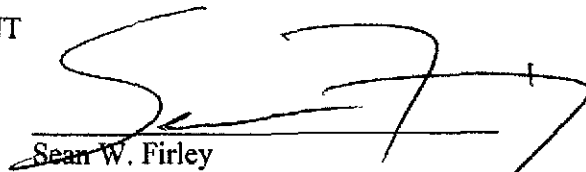
Relief Requested

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; and
- B. order that 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

Dated: October 8, 2010



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