

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL JEFFERSON HARPER  
(CRD No. 4650612),

Respondent.

Disciplinary Proceeding  
No. 2009018908402

Hearing Officer – RSH

**DEFAULT DECISION**

August 9, 2011

**For failing to respond in a timely manner to requests for information, and for failing to appear to testify, in violation of Rules 8210 and 2010, the Respondent was barred from associating with any FINRA-registered firm in any capacity.**

**Appearances**

William Brice La Hue, Senior Regional Counsel, Atlanta, Georgia, and Andrew A. Favret, Regional Chief Counsel, New Orleans, Louisiana, for the Department of Enforcement.

No appearance by or for Respondent.

**DECISION**

**I. Introduction**

The FINRA Department of Enforcement began its investigation of Respondent Michael Jefferson Harper (“Respondent”) after receiving a Uniform Termination Notice for Securities Industry Registration (“Form U5”) for Respondent. International Financial Solutions, Inc. (“IFS”), a FINRA-registered firm, filed the Form U5 on March 23, 2009, terminating Respondent’s registration because he had “failed to cooperate with an

investigation concerning a customer complaint.”<sup>1</sup> Enforcement filed the Complaint against Respondent after he failed to respond in a timely manner to multiple requests for information, and failed to appear for testimony, concerning the complaint disclosed on the Form U5. In its Complaint, Enforcement charged that these failures violated Rules 8210 and 2010.<sup>2</sup>

Enforcement filed the Complaint with the Office of Hearing Officers on March 16, 2011. Respondent did not answer or otherwise respond to the Complaint. Consequently, on June 8, 2011, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of William Brice La Hue<sup>3</sup> and four exhibits. Respondent did not reply to the motion.<sup>4</sup>

## **II. Jurisdiction**

Respondent first became registered as a General Securities Representative with a FINRA-registered firm in April of 2003. Between March 2004 and December 2008, Respondent was registered with several FINRA-registered firms. Respondent was registered through IFS from December 2008 until March 23, 2009, when IFS filed a Form U5, terminating his registration. Respondent has not been associated with any FINRA-registered firm since his termination from IFS.<sup>5</sup>

Although Respondent is not currently registered with a FINRA-registered firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of his registration with a FINRA-registered firm and (2) the Complaint

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<sup>1</sup> Complaint ¶¶ 6-7.

<sup>2</sup> The FINRA Rules are available at [www.finra.org/Rules](http://www.finra.org/Rules).

<sup>3</sup> “Aff.”

<sup>4</sup> The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

<sup>5</sup> Complainant's Exhibit (“CX”)-1; Aff. ¶¶ 5-7.

charges him with failing to respond to FINRA's requests for information made during the two-year period following the termination of his registration with a FINRA-registered firm.<sup>6</sup>

### **III. Respondent's Default**

On March 16, 2011, Enforcement sent the Notice of Complaint and Complaint by first-class mail and certified mail (return receipt requested) to Respondent at his residential address recorded in FINRA's Central Registration Depository ("CRD Address"). The first-class mailing was not returned to Enforcement; however, the certified mailing was returned unclaimed. Respondent did not respond to the Complaint by April 13, 2011, the deadline specified in the Notice of Complaint.<sup>7</sup>

On April 15, 2011, Enforcement sent the Second Notice of Complaint and Complaint by first-class mail and certified mail (return receipt requested) to Respondent at his CRD Address. The first-class mailing was not returned to Enforcement; however, the certified mailing was returned, marked, "unclaimed unable to forward." Respondent did not respond to the Complaint by May 2, 2011, the deadline specified in the Second Notice of Complaint.<sup>8</sup>

To date, Respondent has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

By failing to answer the Complaint, Respondent defaulted. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's Motion for Entry of Default Decision.

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<sup>6</sup> See Article V, Sec. 4(a), FINRA By-Laws, available at [www.finra.org/Rules](http://www.finra.org/Rules) (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

<sup>7</sup> Aff. ¶¶ 11-12; CX-3.

<sup>8</sup> Aff. ¶¶ 12-14; CX-4.

#### **IV. Violations**

##### **A. Failure to Timely Respond to Requests for Information**

The First Cause of Action alleges that Respondent violated Rules 8210 and 2010 by failing to provide information to FINRA in a timely manner.

In a letter dated November 23, 2009, FINRA staff requested, pursuant to Rule 8210, that Respondent provide a written statement concerning trading in the IFS customer account that had been the subject of the complaint reported on the Form U5 filed by IFS. FINRA sent the letter by first-class and certified mail to Respondent at his CRD address, and requested that Respondent submit his statement by December 7, 2009. After Respondent failed to respond, FINRA sent a second letter, dated December 9, 2009, requesting the same statement.

After Respondent failed to respond to the December 9 letter, FINRA conducted a computer search and located two other addresses for Respondent. FINRA then sent two more letters, dated February 4, 2010, and February 19, 2010, requesting the same statement from Respondent. FINRA sent the February letters to Respondent by first-class and certified mail, to both his CRD Address as well as the two newly-discovered addresses. The February letters sent by certified mail were signed for; however, Respondent failed to respond to either of them.<sup>9</sup>

On June 7, 2010, Enforcement issued a Notice of Suspension advising Respondent that he would be suspended from associating with any FINRA member firm in any capacity because of his failure to provide information to FINRA. The Notice indicated that he would be suspended if he did not respond to FINRA's request letters by July 1, 2010. On June 29, 2010, two days before Respondent would have been

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<sup>9</sup> Aff. ¶¶ 16-26; Complaint ¶¶ 8-18.

suspended, and seven months after FINRA's first request for information, he submitted a response to FINRA's request letters.<sup>10</sup>

The Hearing Officer finds that the foregoing facts establish that Respondent violated Rule 8210 by failing to respond in a timely manner to FINRA's requests for information. The fact that Respondent eventually responded to the 8210 Requests "does not absolve him of liability for violating Rules 8210 and 2110."<sup>11</sup> The submission of information after FINRA institutes proceedings is no defense to a finding of violation. FINRA should not have to bring a disciplinary proceeding in order to obtain information requested pursuant to Rule 8210.<sup>12</sup> A violation of Rule 8210 is also a violation of Rule 2010.<sup>13</sup>

#### **B. Failure to Appear for Testimony**

The Second Cause of Action alleges that Respondent failed to appear for testimony requested by FINRA, and thereby violated Rules 8210 and 2010. On February 9, 2011, Enforcement sent Respondent a letter, by first-class and certified mail, to Respondent's CRD Address, and to an alternate address, which Respondent had confirmed as his then-current residential address ("Alternate Address"). The letter requested, pursuant to Rule 8210, that Respondent appear at FINRA's Boca Raton, Florida office on February 25, 2011, and provide a sworn statement. Neither of the letters sent by first-class mail was returned. A receipt for the certified mailing that was sent to Respondent's Alternate Address was returned having been signed. The mailing

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<sup>10</sup> Aff. ¶¶ 27-34; Complaint ¶¶ 19-21.

<sup>11</sup> *Ashton Noshir Gowadia*, Exchange Act Rel. No. 40410, 1998 SEC LEXIS 1887 (Sept. 8, 1998).

<sup>12</sup> *Joseph Ricupero*, Exchange Act Rel. No. 62891, at \*12 (Sept. 10, 2010); *Mark Allen Elliot*, Exchange Act Rel. No. 34194, 1994 SEC LEXIS 1765 (June 10, 1994).

<sup>13</sup> *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at \*5 (N.A.C. Nov. 2, 2001).

sent to his CRD Address was returned unclaimed. Respondent failed to appear for testimony on February 25, 2011.<sup>14</sup>

The Hearing Officer finds that the foregoing facts establish that Respondent violated Rule 8210 by failing to appear for testimony. A violation of Rule 8210 is also a violation of Rule 2010.<sup>15</sup>

## **V. Sanctions**

### **A. Failure to Timely Respond to Requests for Information**

Since FINRA lacks subpoena power, it must rely upon Rule 8210 “to police the activities of its members and associated persons.”<sup>16</sup> “[A member’s] failure to respond to [FINRA’s] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets...”<sup>17</sup> Because compliance with Rule 8210 is necessary for FINRA to carry out its regulatory functions, the FINRA Sanction Guidelines (“Sanction Guidelines”), as recently amended, make clear that where an individual does not respond until after FINRA files a complaint, adjudicators should apply the presumption that the failure constitutes a complete failure to respond.<sup>18</sup> In this case, Respondent did not provide the information FINRA requested until FINRA filed a Notice of Suspension. Even then, Respondent did not respond until a few days before his suspension was to become effective.

The Principal Considerations specific to determining sanctions for this violation—(1) the importance of the information requested as viewed from FINRA’s perspective, (2) the number of requests made and the degree of regulatory pressure

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<sup>14</sup> Aff. ¶¶ 37-40; Complaint ¶¶ 31-35.

<sup>15</sup> *Hoeper*, 2001 NASD Discip. LEXIS 37, at \*5.

<sup>16</sup> *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438; 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

<sup>17</sup> *PAZ Sec.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at \*13 (Apr. 11, 2008), *aff’d sub nom. PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009.)

<sup>18</sup> FINRA Sanction Guidelines 33 (2011 ed.), [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

required to obtain a response, and (3) the length of time to respond—support the imposition of a bar. The nature of the information FINRA sought from Respondent was important and goes to the heart of its regulatory obligation—investor protection. FINRA staff was investigating a customer complaint. The staff sent numerous requests to Respondent, and was required to file a Notice of Suspension before it got Respondent's attention. By the time Respondent provided information, seven months had elapsed since the staff first requested the information. There is no evidence of mitigating factors in the record. The Hearing Officer finds that a bar from associating with any FINRA-registered firm in any capacity is the appropriate sanction.

**B. Failure to Appear for Testimony**

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.<sup>19</sup> When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.<sup>20</sup> For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.<sup>21</sup> Respondent failed to respond in any manner to FINRA's request that he appear for testimony. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

Accordingly, the Hearing Officer finds that Respondent should be barred from associating with any FINRA-registered firm in any capacity.

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<sup>19</sup> *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000).

<sup>20</sup> *Hannan*, 1998 SEC LEXIS 1955, at \*9.

<sup>21</sup> Sanction Guidelines 33.

**VI. Order**

For violating Rules 8210 and 2010 by failing to provide requested information in a timely manner, and failing to appear for testimony, Michael Jefferson Harper is barred from associating with any FINRA-registered firm in any capacity. The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "Rochelle S. Hall", is written over a horizontal line.

Rochelle S. Hall  
Hearing Officer

Copies to: Michael Jefferson Harper (via overnight courier and first-class mail)  
William Brice La Hue, Esq. (via electronic and first-class mail)  
Andrew A. Favret, Esq. (via electronic and first-class mail)  
David R. Sonnenberg, Esq. (via electronic mail)  
Mark Dauer, Esq. (via electronic mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
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MICHAEL JEFFERSON HARPER,  
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Respondent.

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No. 2009018908402

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Michael Jefferson Harper (Harper) failed to respond in a timely manner to multiple FINRA requests, made pursuant to FINRA Rule 8210, for information in connection with an investigation of allegations of potential FINRA Rule violations, in violation of FINRA Rules 8210 and 2010. Harper further failed to appear and testify as requested by FINRA pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. Harper entered the securities industry in March 2003, and was first registered with FINRA as a general securities representative in April 2003. Harper was later registered with FINRA as an options principal in March 2004 and as a general securities principal in February 2009. Harper was employed by several FINRA member firms from March 2003 through December 2008. In December 2008, Harper was registered by FINRA

member firm International Financial Solutions, Inc. (IFS). Harper was registered with IFS until March 2009 and is not currently associated with a FINRA member firm.

3. On July 20, 2009, J.P. Turner & Company, LLC (JP Turner), a prior employer, filed an Amended Uniform Termination Notice for Securities Industry Registration (Form U5), on behalf of Harper. The Amended Form U5 filed by JP Turner disclosed an arbitration filed by a customer alleging various sales practice violations. The Amended Form U5 was filed within two years of Harper's termination, and disclosed that Harper may have engaged in conduct actionable under FINRA's Rules. As a result, the Amended Form U5 recommenced FINRA's two-year jurisdiction period and, as a result, Harper remains subject to FINRA's jurisdiction until July 20, 2011.
4. Although Harper has not been associated with a FINRA member firm since March 2009, Harper remains subject to FINRA's jurisdiction for 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 when an Amended Form U5 was filed; and (2) the Complaint charges Harper with failing to respond to FINRA requests for information in a timely manner and with failing to testify during the two-year period after the date when an Amended Form U5 was filed.

#### **FIRST CAUSE OF ACTION**

##### **FINRA Conduct Rule 2010 and FINRA Procedural Rule 8210**

##### **(Failure to Respond in a Timely Manner to Information Requests)**

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.

6. In March 2009, IFS filed a Form U5 on behalf of Harper. The Form U5 indicates that Harper had been terminated for failing to cooperate with an investigation regarding a customer complaint, among other things.
7. In July 2009, FINRA initiated an investigation into the allegations on the Form U5 filed by IFS on behalf of Harper.
8. On November 23, 2009, FINRA sent a letter addressed to Harper at his residential CRD address, and to an alternate address, by first class and certified mail.
9. The November 23, 2009 letter requested, pursuant to FINRA Rule 8210 that Harper provide FINRA with a detailed written statement concerning the trading in a customer's account.
10. The November 23, 2009 letter requested that Harper submit the requested written statement no later than December 7, 2009. Harper failed to respond by the December 7, 2009 deadline.
11. Therefore, on December 9, 2009, FINRA sent a second letter to Harper. This letter again requested, pursuant to FINRA Rule 8210, that Harper submit a detailed written statement to FINRA.
12. The December 9, 2009 letter requested that the statement be submitted no later than December 23, 2009. Harper failed to respond by the December 23, 2009 deadline.
13. FINRA performed a computerized person search and located a third address for Harper.
14. FINRA sent a third letter to Harper on February 4, 2010, addressed to Harper at his residential CRD address and to two alternate addresses.

15. The February 4, 2010 letter once again requested, pursuant to FINRA Rule 8210, that Harper submit a detailed written statement to FINRA, and further requested that such statement be submitted no later than February 18, 2010.
16. The February 4, 2010 letter sent to one of the two alternate addresses by certified mail was delivered. However, Harper failed to respond by the February 18, 2010 deadline.
17. FINRA subsequently sent a fourth letter to Harper on February 19, 2010. The February 19, 2010 letter again requested, pursuant to FINRA Rule 8210, that Harper submit a detailed written statement, and further set a deadline of March 5, 2010 for submission of the response.
18. The February 19, 2010 letter sent by certified mail to one of the two alternate addresses by certified mail was delivered, as evidenced by the certified return receipt, which was signed by someone with the last name "Harper." Harper failed to respond by the March 5, 2010 deadline.
19. On June 7, 2010, Enforcement issued a Notice of Suspension (Notice) advising Harper that he would be suspended from associating with any FINRA member firm in any capacity due to his failure to provide information to FINRA.
20. The Notice indicated that Harper would be suspended if he did not respond to FINRA's request letters by July 1, 2010.
21. On June 29, 2010, two days before Harper would have been suspended, Harper submitted a response to FINRA's request letters.
22. Based on Harper's response, FINRA determined to request additional, follow-up information from Harper.

23. On July 14, 2010, a new request letter was sent to Harper, pursuant to FINRA Rule 8210. The letter was sent to the same three addresses as the previous letters, but only one of the letters addressed to one of the two alternate addresses was delivered. Again, Harper failed to respond.
24. FINRA then sent a follow-up letter on July 29, 2010 to Harper at his residential CRD address and to the two alternate addresses. The July 29, 2010 letter once more requested, pursuant to FINRA Rule 8210, that Harper submit an additional response, this time by August 12, 2010. A receipt for the July 29, 2010 letter sent by certified mail to one of the two alternate addresses was returned indicating that it had been delivered, but was signed by someone other than Harper.
25. Harper failed to respond to the July 29, 2010 letter by the August 12 deadline.
26. However, on August 27, 2010, FINRA received a written response from Harper. Harper provided the additional information as requested and further confirmed that his current address was the alternate address where each of the previous information request letters had been delivered.
27. However, Harper did not respond to FINRA's request for information until approximately seven months after FINRA's initial request in November 2009, and five months after FINRA had obtained actual service on him.
28. Thereafter, Harper failed to respond to FINRA's follow-up request and ultimately responded to FINRA's second follow-up request 15 days after FINRA requested that the response be submitted.

29. Harper's failure to submit the requested written statement in a timely manner impeded FINRA's investigation, and prevented FINRA from timely completing its regulatory responsibility to fully investigate potential rule violations.
30. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Respondent Harper.

## **SECOND CAUSE OF ACTION**

### **FINRA Conduct Rule 2010 and FINRA Procedural Rule 8210**

#### **(Failure to Appear and Testify)**

31. The Department realleges and incorporates by reference paragraphs 1 through 30 above.
32. On February 9, 2011, Enforcement sent Harper a letter, via first class and certified mail, addressed to Harper's residential CRD address and to an alternate address, which Harper had confirmed as his current residential address.
33. The February 9, 2011 letter requested, pursuant to FINRA Rule 8210, that Harper appear at FINRA's Florida Office located in Boca Raton on February 25, 2011, and provide an On-The-Record (OTR) sworn statement.
34. A receipt for the February 9, 2011 letter, sent by certified mail to the alternate address which Harper had confirmed as his current residential address was returned indicating that it had been delivered, but was signed by someone other than Harper. The February 9, 2011 letter sent to Harper's residential CRD address, via certified mail, was returned unclaimed.
35. Harper failed to appear on February 25, 2011 at FINRA's Florida office for the OTR as requested pursuant to FINRA Rule 8210.

36. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Respondent Harper.

**RELIEF REQUESTED**

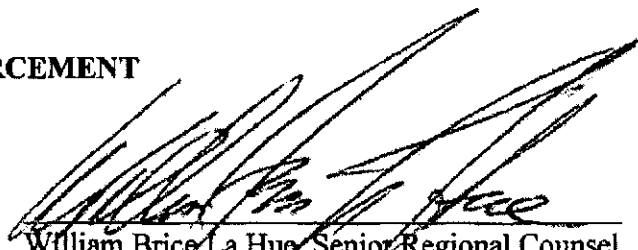
WHEREFORE, the Department respectfully requests that the Panel:

- 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 the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date:

3/16/11

  
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