

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEITH HOWARD MATHIS
(CRD No. 1783068),

Respondent.

Disciplinary Proceeding
No. 2010020778401

Hearing Officer – AWL

DEFAULT DECISION

February 5, 2013

Respondent Keith Howard Mathis is barred from associating with any FINRA member firm in any capacity for (1) allowing Triad to conduct a securities business without maintaining adequate net capital, in violation of FINRA Rule 2010; (2) causing Triad to maintain inaccurate books and records, in violation of NASD Rule 3110 and FINRA Rule 2010; and (3) filing an inaccurate FOCUS Report, in violation of FINRA Rule 2010. He is also barred for his failure to appear and provide testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

William Brice La Hue, Senior Regional Counsel and David B. Klafter, Regional Chief Counsel, for the Department of Enforcement, Complainant

No appearance by or on behalf of Keith Howard Mathis, Respondent.

DECISION

I. Introduction

Respondent Keith Howard Mathis entered the securities industry initially in a non-registered capacity in November 1987. In December 2001, after affiliations with two other member firms, Mathis joined Triad Advisors, Inc. (Triad). Several years later, during his employment with Triad, he became registered as Triad's Financial and Operations Principal (FINOP).

In March 2010, FINRA began a routine sales practice examination of Triad which included a review of the firm's financial reporting and books and records. On August 9, 2010, Triad terminated Mathis for filing a false Financial and Operational Combined Uniform Single report (FOCUS report). FINRA's investigation of the circumstances surrounding Mathis' termination led to the filing of the Complaint.

Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (Default Motion) after Mathis failed to answer the Complaint. Based on Enforcement's Complaint and the evidence it submitted in support of its Default Motion,¹ the Hearing Officer finds that Mathis committed multiple violations of NASD and FINRA Rules² by (1) allowing Triad to conduct a securities business without maintaining adequate net capital; (2) causing Triad to maintain inaccurate books and records; (3) filing an inaccurate FOCUS report; and (4) failing to appear and provide testimony. For these violations, the Hearing Officer bars Mathis from associating with any member firm in any capacities.³

¹ The motion is supported by the Declaration Supporting Motion for Entry of Default Decision (Decl.) and four exhibits, labeled CX-1 through CX-4.

² Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50 (Oct. 2008). As part of the first phase of that process, NASD Conduct Rule 2110 was adopted without material change as FINRA Conduct Rule 2010. Because the complaint in this case was filed after December 15, 2008, the procedural rules that apply are those that became effective on December 15, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue. Under Rule 0140, persons associated with a FINRA member to have the same duties and obligations as the member. The rules are available at www.finra.org/Industry/Regulation/FINRARules.

³ FINRA has jurisdiction of this proceeding because (1) the Complaint was filed within two years after the effective date of termination of Mathis' registration or association with a FINRA member; and (2) the Complaint charges Mathis with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to FINRA Rule 8210 requests to appear and provide testimony during the two-year period after the date he ceased to be registered or associated with a FINRA member firm. *See* Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

II. Granting the Motion for Entry of Default Decision

On August 3, 2012, Enforcement filed the Complaint with the Office of Hearing Officers and served Mathis with a copy of the Notice of the Complaint and Complaint that same day.⁴ Enforcement properly served Mathis at his residential address, as recorded in the Central Registration Depository (CRD Address), in accordance with Rule 9134(a)(2).⁵

The Notice required Mathis to file an answer on or before August 31, 2012. When Mathis did not answer the Complaint by the deadline, Enforcement served Mathis with a Second Notice of Complaint on September 5, 2012, in accordance with Rule 9134(a)(2). The Second Notice required Mathis to file his answer on or before September 24, 2012.⁶ Mathis did not file an answer or otherwise respond to the Second Notice of Complaint. Mathis also failed to respond to Enforcement's Default Motion.

Pursuant to Mathis' default, the Hearing Officer grants Enforcement's Default Motion and deems the allegations in the attached Complaint admitted.⁷

III. Findings of Fact

Mathis started his career in the securities industry in 1987 in a non-registered

⁴ Decl. ¶ 7.

⁵ *Dep't of Enforcement v. Moore*, No. 200801510561, 2012 FINRA Discip. LEXIS 45, at *19-21 (N.A.C. July 26, 2012) (Respondent has constructive notice of complaint when mailed to CRD address). *See also* Notice to Members 99-77, available at www.finra.org/Industry/Regulation/Notices/1999/P004087 (disciplinary complaints mailed to the last CRD address are considered received at that address, whether or not the individual actually receives them; individuals are cautioned to update their addresses or potentially suffer a default decision).

⁶ Decl. ¶¶ 8-10.

⁷ Rules 9215(f) and 9269(a).

capacity and became employed by Triad in December 2001.⁸ Triad did not file a Uniform Application for Securities Industry Registration or Transfer (Form U4) on behalf of Mathis until November 18, 2004.⁹ He was registered with FINRA as Triad's Introducing Broker-Dealer/Financial and Operations Principal in December 2004 and as its FINOP in January 2007.¹⁰ Mathis also served as Triad's Executive Vice President and Chief Financial Officer (CFO).¹¹ Triad filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on August 17, 2010, disclosing that it terminated Mathis on August 9, 2010 for filing a false FOCUS report.¹² Mathis is no longer registered or associated with any member firm.¹³

FINRA began a routine, sales practice examination of Triad in March 2010, which included a review of its financial reporting and books and records.¹⁴ During the course of the examination, FINRA sought information from Mathis regarding his activities at Triad, including his net capital calculations, maintenance of Triad's books and records, and the preparation and filing of FOCUS reports.¹⁵

⁸ Compl. ¶ 2; CX-1, at 3, 7. Mathis left the industry in November 1993 and did not return until hired by Triad in December 2001.

⁹ Compl. ¶ 2; CX-1, at 4.

¹⁰ Compl. ¶ 2; CX-1, at 4.

¹¹ Compl. ¶ 2; CX-1, at 4.

¹² Compl. ¶ 2; CX-2, at 1-2; CX-1, at 4.

¹³ Compl. ¶ 3; CX-1, at 4.

¹⁴ Compl. ¶ 27; Decl. ¶ 12.

¹⁵ Compl. ¶ 28.

A. Mathis, as CFO and FINOP, Allowed Triad to Conduct a Securities Business While Failing to Maintain the Required Minimum Net Capital

In accordance with Securities Exchange Act of 1934 (Exchange Act) Rule 15c-1, Triad was required to maintain the higher of \$250,000 or a percentage of its aggregated indebtedness as its minimum net capital in order to conduct a securities business. From November 20, 2009 through December 9, 2009, Triad's minimum net capital amount was based on its percentage of aggregated indebtedness.¹⁶ Triad, however, did not maintain its minimum required net capital during ten days of this period. The following chart reflects Triad's net capital deficiencies during this time frame.¹⁷

TRIAD'S NET CAPITAL CALCULATION DEFECIENCIES

DATE	NET CAPITAL	REQUIRED NET CAPITAL	NET CAPITAL DEFICIENCY
11/20/09	\$159,571	\$287,832.60	\$128,261.60
11/23/09	\$195,280	\$304,579.93	\$109,299.93
11/30/09	\$140,326	\$293,965.67	\$153,639.67
12/01/09	\$173,381	\$280,727.67	\$76,619.00
12/02/09	\$202,786	\$282,510.87	\$79,724.87
12/03/09	\$82,967	\$257,002.67	\$174,035.67
12/04/09	\$55,594	\$309,699.53	\$254,105.53
12/07/09	\$85,994	\$278,117.67	\$192,123.67
12/08/09	\$116,222	\$257,659.93	\$141,437.93
12/09/09	\$249,585	\$283,013.67	\$33,428.67

Mathis, as Triad's CFO and FINOP, was responsible for calculating Triad's required minimum net capital and ensuring that Triad did not conduct a securities business while failing to maintain its required minimum net capital.¹⁸ He knew in December 2009 that a returned check created a negative impact on Triad's required net

¹⁶ Compl. ¶ 7.

¹⁷ Compl. Schedule A.

¹⁸ Compl. ¶ 9.

capital.¹⁹ He, however, instructed a subordinate “to be creative with respect to the bounced check.”²⁰ Mathis prepared Triad’s net capital computations and misclassified the \$462,000 returned check as an allowable asset when it should have been classified as a non-allowable asset.²¹ He also improperly netted several unrelated intercompany assets and liabilities and misclassified the resulting net debit amount as an allowable asset.²² Additionally, Mathis treated approximately \$44,000 of cash balances from affiliates as allowable when they were actually non-allowable.²³ As a result of misclassifying these assets, Mathis’ computations erroneously stated that Triad maintained sufficient net capital.²⁴ Mathis’ misconduct permitted Triad to continue conducting a securities business on ten days when it failed to maintain the required minimum net capital.²⁵

B. Mathis Caused Triad to Maintain Inaccurate Books and Records

Mathis’ responsibilities as Triad’s CFO and FINOP included keeping records of Triad’s net capital computations with the books and records required of a member firm.²⁶ As a result of Mathis’ misconduct in calculating Triad’s net capital, he caused Triad’s books and records to contain false information.²⁷

¹⁹ Compl. ¶ 10.

²⁰ Compl. ¶ 10.

²¹ Compl. ¶¶ 10, 17; Decl. ¶ 19.

²² Compl. ¶ 17.

²³ *Id.*

²⁴ Decl. ¶¶ 19-20.

²⁵ Compl. ¶ 11; Compl. Schedule A.

²⁶ Compl. ¶ 16. *See also* NASD Conduct Rule 3110(a) and Exchange Act Rule 17a-3(a)(2).

²⁷ Compl. ¶ 18.

C. Mathis Filed an Inaccurate FOCUS Report

Mathis, as CFO and FINOP for Triad, was responsible for the preparation and filing of accurate FOCUS reports for Triad.²⁸ He prepared or was responsible for preparing a materially inaccurate FOCUS report for the period ending November 30, 2009.²⁹ Mathis approved the filing of the inaccurate FOCUS report using the erroneous net capital calculation.³⁰

D. Mathis Failed to Appear and Provide Testimony

During the examination of Triad, FINRA needed information from Mathis regarding his net capital calculations, maintenance of Triad's books and records and the FOCUS filings.³¹ Pursuant to FINRA Rule 8210, FINRA staff mailed Mathis a letter on November 30, 2010, to his CRD Address, requiring that Mathis appear and provide testimony on December 22, 2010.³² FINRA received a letter from Mathis on December 8, 2010, stating that "he was not able to provide a response."³³ The letter further stated that he had provided all the information he had related to the matters and he lacked access to further information or data.³⁴ Mathis also stated in the letter that he was not returning to the securities industry and wanted his license and registration to expire.³⁵

Pursuant to FINRA Rule 8210, FINRA staff mailed a second letter on December 14, 2010, to Mathis' CRD Address, requesting his appearance to provide testimony on

²⁸ Compl. ¶ 22.

²⁹ Compl. ¶ 23; Decl. ¶ 33.

³⁰ Decl. ¶ 36.

³¹ Compl. ¶ 28.

³² Compl. ¶¶ 29-30.

³³ Compl. ¶ 32.

³⁴ Compl. ¶ 33.

³⁵ *Id.*

January 5, 2011.³⁶ The mailed return receipt showed that Mathis received and signed for the letter.³⁷ However, Mathis failed to appear and testify on January 5, 2011, as requested.³⁸

FINRA staff mailed a third Rule 8210 request to Mathis' CRD Address on June 11, 2012, requesting Mathis' appearance and testimony on June 22, 2012.³⁹ Mathis again failed to appear.⁴⁰

IV. Conclusions of Law

A. Mathis, as CFO and FINOP, Allowed Triad to Conduct a Securities Business While Failing to Maintain the Required Minimum Net Capital

Mathis caused Triad to violate the Securities Exchange Act of 1934 Rule 15c3-1 by intentionally miscalculating Triad's minimum net capital and permitting Triad to continue operating a securities business without the appropriate net capital. The principal purposes of the net capital rule are to "ensure that broker-dealers have sufficient liquid capital to protect the assets of customers and to meet their responsibilities to other broker-dealers."⁴¹ "[I]t imposes financial responsibility on the securities industry by: (1) establishing minimum net capital requirements for broker-dealers; and (2) defining the

³⁶ Compl. ¶¶ 34-35.

³⁷ Compl. ¶ 36.

³⁸ Compl. ¶ 37.

³⁹ Compl. ¶¶ 38-39.

⁴⁰ Compl. ¶ 41. FINRA staff received the certified letter returned as "unclaimed." See Compl. ¶ 40.

⁴¹ *L.H. Alton & Co.*, Exchange Act. Rel. No. 40886, 53 S.E.C. 1118, 1121 (1999) (quoting *Lowell H. Listrom*, 50 S.E.C. 883, 886 (1992), *aff'd*, 975 F.2d 866 (8th Cir. 1992)), *pet. for review denied*, 229 F.3d 1156 (9th Cir. 2000). See also *Fox & Co. Investments, Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *18 (Oct. 28, 2005) (citations omitted).

process used by broker-dealers to determine their net capital at all times.”⁴²

Based on the evidence deemed admitted, Mathis had both substantial responsibility and involvement with the misclassifications that resulted in the net capital violation. Mathis, as FINOP, had the duty to supervise and perform the firm’s responsibilities “under all financial responsibility rules promulgated pursuant to the provisions of the [Exchange] Act.”⁴³ “[O]fficers of securities firms bear a heavy responsibility in ensuring that the firm complies with all applicable rules and regulations...[including]...the net capital requirements.”⁴⁴ Thus, Mathis’ failure to do so violated FINRA Rule 2010.⁴⁵

B. Mathis Caused Triad to Maintain Inaccurate Books and Records

NASD Conduct Rule 3110(a) requires member firms to “make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3.”⁴⁶ Specifically, Rule 17a-3(a)(2) requires broker-dealers to keep, among other records, net capital computations. NASD Rule 1022(b) defines the FINOP’s duties to include responsibility for individuals involved with the maintenance of the member’s books and records from

⁴² *Dep’t of Enforcement v. Inv. Mgmt. Corp.*, No. C3A010045, 2003 NASD Discip. LEXIS 47, at *14 (NAC Dec. 15, 2003).

⁴³ NASD Rule 1022(b)(2)(E)

⁴⁴ *Hutchison Financial Corp.*, Exchange Act Rel. No. 32215, 51 S.E.C. 398, 403-04 (1993).

⁴⁵ *Dep’t of Enforcement v. Block*, No. C05990026, 2001 NASD Discip. LEXIS 335, at *16 (NAC Aug. 16, 2001); *James Pritula*, Exchange Act Rel. No. 40647, 53 S.E.C. 968, 976-77 (1998).

⁴⁶ See also 17 C.F.R. §240.17a-3(a)(6)(i) and §240.17(a)-4(b)(1) for the Exchange Act’s rules requiring member firms to make and keep current books and records relating to their business activities, including net capital computations.

which financial reports are derived.⁴⁷ The duty to maintain records and file reports necessarily includes that such records and reports be true and correct.⁴⁸ Here, Mathis caused Triad to violate FINRA Rule 3110 and Exchange Act Rule 17a-3 by creating and maintaining the erroneous net capital computations as part of Triad's books and records.

Causing a member firm to have false information in its books or records violates not only NASD Rule 3110, but also FINRA Rule 2010 as "it is well established that a violation of a Commission or [FINRA] rule or regulation is inconsistent with just and equitable principles of trade, and is therefore also a violation of Rule [2010]."⁴⁹ Mathis had the obligation as FINOP to independently review the underlying documentation to determine its accuracy.⁵⁰ Instead of protecting the accuracy of the firm's books and records, Mathis inserted inaccurate net capital calculations based upon false classifications for multiple assets. Mathis caused Triad to maintain inaccurate books and records, in violation of NASD Rule 3110 and FINRA Rule 2010.

C. Mathis Filed an Inaccurate FOCUS Report

Exchange Act Rule 17a-5 requires a member firm to prepare and file periodic reports of its financial condition with FINRA, including FOCUS reports. As the FINOP, Mathis was responsible for the final approval and accuracy of financial reports submitted to any duly established securities industry regulatory body as well as the final preparation of such reports.⁵¹ Mathis' misclassification of the bounced check, the net debit after

⁴⁷ See NASD Rule 1022(b)(2)(D).

⁴⁸ *Inv. Mgmt. Corp.*, 2003 NASD Discip. LEXIS 47, at *20, citing *Hutchinson Fin. Corp.*, 51 S.E.C. 398, 399 (1993).

⁴⁹ *Dep't of Enforcement v. Kirlin Sec.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at *60 n.81 (Dec. 10, 2009).

⁵⁰ See *William H. Gerhauser, Sr.*, Exchange Act Rel. No. 40639, 53 S.E.C. 933 (Nov. 4, 1998).

⁵¹ NASD Rule 1022(b)(2)(A) and (B).

improperly netting intercompany assets, and the affiliates' cash balances resulted in erroneous net capital calculations. These willful miscalculations in turn created a materially inaccurate November 2009 FOCUS report for Triad.

Mathis' misconduct violated FINRA Rule 2010. The rule requires a high standard of commercial honor and just and equitable principles of trade of its member firms and associated persons. Mathis' actions reflect his inability to comply with regulatory requirements fundamental to the securities business and his inability to perform fiduciary responsibilities,⁵² including those required of a FINOP.

D. Mathis Failed to Appear and Provide Testimony

FINRA Rule 8210 is a key element in FINRA's oversight function as it allows FINRA to carry out its regulatory functions without subpoena power.⁵³ FINRA properly served three requests pursuant to Rule 8210,⁵⁴ but Mathis failed to comply. Mathis violated his duty to cooperate and provide the requested information pursuant to FINRA Rule 8210. Such violation also violates FINRA Rule 2010.⁵⁵

⁵² *Dep't of Enforcement v. Manoff*, No. C9A990007, 2001 NASD Discip. LEXIS 4, at *21 (NAC Apr. 26, 2001) (citations omitted).

⁵³ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) *pet. denied*, 347 Fed. App'x. 692 (2d Cir. 2009); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000); *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (lack of subpoena power requires reliance on Rule 8210 to regulate its members and associated persons).

⁵⁴ Rule 8210(c).

⁵⁵ *See CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001) (violation of Rule 8210 also was violation of [FINRA] Rule [2010]); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

V. Sanctions

The FINRA Sanction Guidelines (“Guidelines”)⁵⁶ provide guidance for determining the proper remedial action for Mathis’ misconduct. Where multiple, related violations arise as a result of a single underlying situation, a single set of sanctions may be a more appropriate the achieve FINRA’s remedial goals.⁵⁷ Application of a single sanction is appropriate where erroneous net capital calculations also caused inaccurate books and records and an inaccurate FOCUS report.⁵⁸ Here, the violations for inaccurate recordkeeping and the inaccurate FOCUS report stem from Mathis’ mischaracterizing several assets and his improper net capital calculations. Therefore, the Hearing Officer assesses a single set of sanctions for the first three causes of action and a separate sanction for Mathis’ failure to appear and provide testimony.

A. **Mathis, as Triad’s CFO and FINOP, (1) Allowed Triad to Conduct a Securities Business While Failing to Maintain the Required Minimum Net Capital; (2) Caused Triad to Maintain Inaccurate Books and Records, and (3) Filed an Inaccurate FOCUS Report**

In deciding upon an appropriate single sanction, the Hearing Officer reviewed the Guidelines’ principal considerations and specific considerations for each of the three violations.⁵⁹ As discussed below, such considerations demonstrate that Mathis’ violations were egregious.

⁵⁶ See <http://www.finra.org/Industry/Enforcement/SanctionGuidelines> (2011).

⁵⁷ *Dep’t. of Enforcement v. Fox & Co. Inv., Inc.*, No. C3A030017, 2005 NASD Discip LEXIS 5 (NAC February 24, 2005) *aff’d* Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822 at *36, n.41 (Oct. 28, 2005); *Inv. Mgmt. Corp.*, 2003 NASD Discip. LEXIS 47, at **27-28; Guidelines 4, General Principles Applicable to All Sanction Determinations.

⁵⁸ See e.g., *Fox & Co. Investments, Inc.*, 2005 SEC LEXIS 2822 at *36, n.41; *Paul Joseph Benz*, Exchange Act Rel. No. 51046, 2005 SEC LEXIS 116, at *10 (Jan. 14, 2005).

⁵⁹ Guidelines 6-7 (Principal Considerations 3, 8, 10, 13), 28 (Net Capital Violations), 29 (Recordkeeping Violations) and 68 (FOCUS Reports-Late Filing; Failing to File; Filing False or Misleading Reports).

The inaccurate calculations were material and masked the fact that Triad operated a securities business while having a net capital that was thousands of dollars below its required minimum. The numerous misclassifications and miscalculations by Mathis permitted Triad to continue operating its business for the potential of monetary gain and impermissibly placed the risk of insufficient net capital on others doing business with Triad. Mathis opted to conceal the net capital deficiency instead of having Triad voluntarily cease business until its capital was sufficient.⁶⁰ His actions frustrated the purpose of the net capital rule by failing to provide the protections to the investing public and other market participants while Triad operated its securities business.

Mathis did not mistakenly miscalculate but rather recognized the impact of the bounced check and directed the creative handling of it to mask its effect. Mathis did not have any reasonable basis for his mischaracterizations nor was his misconduct a single occurrence, implicating perhaps a mistake or negligence. Instead, his misconduct involved intentional mischaracterizations with multiple assets and even involved his recruiting of a subordinate to assist in the misconduct.

Although knowing that he had misclassified and miscalculated Triad's required net capital, Mathis still made his calculations a part of Triad's books and records. He also used his erroneous calculations to misrepresent Triad's situation on the required regulatory report. His intent was to conceal the net capital deficiency which created inaccurate books and records and a false FOCUS report. Then, he waited for his misconduct to be detected instead of voluntarily complying with the rule and correcting

⁶⁰ Decl. ¶¶ 21, 23 (referencing emails that document Mathis' knowingly netting intercompany assets and liabilities and his handling of the non-allowable bounced check).

his errors. Mathis' actions are inconsistent with the industry's high standard of honor and just and equitable principles.

For egregious conduct with no mitigating factors, a bar is an appropriate sanction.⁶¹ Accordingly, the Hearing Officer bars Mathis for (1) allowing Triad to conduct a securities business while failing to maintain the minimum required net capital; (2) causing Triad to maintain inaccurate books and records; and (3) filing an inaccurate FOCUS report, in violation of FINRA Rule 2010, NASD Rule 3110, and FINRA Rule 2010.

B. Mathis Failed to Appear and Provide Testimony

FINRA Rule 8210 "is at the heart of the self-regulatory system for the securities industry" and when members delay their responses or neglect entirely their responsibilities under the Rule, they "undermine the ability of [FINRA] to ... protect the public interest."⁶² The principal consideration in determining sanctions for a violation of Rule 8210 is the importance of the information requested when viewed from FINRA's perspective.⁶³ Here, the seriousness of Mathis' misconduct and the extent of his involvement with the miscalculations made his testimony important to FINRA's investigation.

⁶¹ Sanctions for egregious Net Capital and Recordkeeping Violations include a lengthier suspension (of up to two years) or a bar (Guidelines 28, 29), while the sanctions for filing false or misleading FOCUS Reports consider suspension of the financial principal in any or all capacities for up to two years (Guidelines 68).

⁶² *Howard Brett Berger*, 2008 SEC LEXIS 3141, at *13 (2008).

⁶³ Guidelines 33.

A bar is standard when a respondent completely fails to respond to Rule 8210 requests.⁶⁴ Here, Mathis responded to the first request by stating that he had no more information and offering to let his licenses lapse. Such a letter was not compliance with the request which sought Mathis' appearance. Additionally, he failed to appear as requested. Further, Mathis failed to respond at all to the second and third requests. Respondents "cannot take it upon themselves to determine whether information requested is material to [a FINRA] investigation of their conduct."⁶⁵ Here, FINRA staff sought Mathis' testimony three separate times and failed to obtain his cooperation on any of them. His failure to appear and provide the requested testimony impeded FINRA's investigation.

As the Securities and Exchange Commission has emphasized, "[a] complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."⁶⁶ No mitigating facts exist to justify a sanction less than a bar. Accordingly, the Hearing Officer bars Mathis for his complete failure to appear and provide testimony, in violation of FINRA Rules 8210 and 2010.

⁶⁴ Guidelines 33. See also, *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *pet. denied*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. 2009) (complete failure renders violator unfit for securities industry because self-regulatory system cannot function without compliance with Rule 8210).

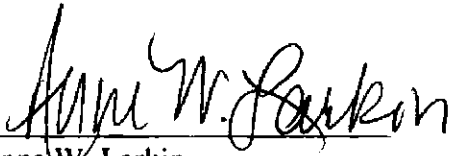
⁶⁵ *Dep't of Enforcement v. Harvest Capital Investments, LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *34 (NAC Oct. 6, 2008) (citation omitted).

⁶⁶ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *10 (2008).

VI. Order

Respondent Keith Howard Mathis is barred from associating with any FINRA member firm in any capacity for (1) allowing Triad to conduct a securities business while failing to maintain minimum required net capital, in violation of FINRA Rule 2010; (2) causing Triad to maintain inaccurate books and records, in violation of NASD Rule 3110 and FINRA Rule 2010; (3) filing an inaccurate FOCUS Report, in violation of FINRA Rule 2010. He is also barred for his failure to appear and provide testimony, in violation of FINRA Rules 8210 and 2010.

If this Default Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Anne W. Larkin
Hearing Officer

Copies to:

Keith Howard Mathis (via overnight courier and first-class mail)
William Brice La Hue, Esq. (via first-class and electronic mail)
David B. Klafter, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEITH HOWARD MATHIS,
(CRD No. 1783068)

Respondent.

Disciplinary Proceeding
No. 2010020778401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This matter involves multiple violations by Keith Howard Mathis (Mathis), which include, allowing Triad Advisors, Inc. (Triad) to conduct a securities business while failing to maintain adequate net capital, creating false books and records and filing a materially inaccurate FOCUS report on behalf of Triad. Finally, Mathis failed to appear and testify, pursuant to FINRA Rule 8210. As a result of the foregoing, Mathis violated NASD Conduct Rule 3110 and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Mathis entered the securities industry in November 1987, when he was employed by a FINRA member firm in a non-registered capacity. Mathis was employed by two other FINRA member firms from November 1987 through November 1993.¹ Mathis was employed by Triad in December 2001, but Triad did not file a Form U4 on behalf of Mathis until November 18, 2004. Mathis was registered with FINRA as an introducing broker-

¹ Mathis left the securities industry in November 1993 and did not return until December 2001.

dealer/financial and operations principal (FINOP) in December 2004. Mathis served as Executive Vice President, Chief Financial Officer ("CFO") and FINOP for Triad. Mathis remained with Triad until August 17, 2010, when he was terminated, and Triad filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on his behalf. Mathis is not currently employed by a FINRA member firm.

3. Although Respondent Mathis is no longer registered or associated with a FINRA member firm, he 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 effective date of termination of Respondent Mathis's registration with Triad, namely on August 17, 2010 when Triad filed a Form U5; and (2) the Complaint charges Mathis with misconduct committed while he was registered with a FINRA member firm, and with failing to appear for an on-the-record testimony during the two-year period after the date upon which Mathis ceased to be registered with a FINRA member firm.

FIRST CAUSE OF ACTION

FINRA Rule 2010

(Failure to Maintain Minimum Required Net Capital)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. Securities Exchange Act of 1934 (Exchange Act) Rule 15c3-1 requires that broker-dealers have and maintain certain minimum net capital.
6. At all times relevant to this Complaint, Triad was a broker-dealer conducting a securities business, and as such, was required to comply with the minimum net capital requirements set forth in Exchange Act Rule 15c3-1.

7. Triad was required to maintain its statutory minimum net capital requirement of \$250,000 or a percentage of its aggregate indebtedness, whichever was higher. From November 20, 2009 through December 9, 2009, Triad was required to maintain its minimum net capital based upon a percentage of its aggregate indebtedness.
8. On November 20, 2009, November 23, 2009, November 30, 2009, December 1-4, 2009 and December 7-9, 2009, Triad utilized the instrumentalities of interstate commerce to engage in a securities business while failing to maintain its minimum net capital as required by Exchange Act Rule 15c3-1 based upon its aggregate indebtedness as more fully described on **Schedule A** attached hereto and incorporated herein by reference.
9. Mathis, as Triad's CFO and FINOP, was responsible for ensuring that Triad did not conduct a securities business while failing to maintain its required minimum net capital.
10. In fact, after Mathis became aware of a returned check and the resulting net capital impact in December 2009, he instructed a subordinate that: "WE are going to have to be creative with respect to the bounced check." As a result, an intercompany receivable was improperly reclassified from a non-allowable receivable to an allowable receivable.
11. Mathis permitted Triad to conduct a securities business on the 10 business days identified in paragraph 8 above, while Triad failed to maintain its minimum required net capital.
12. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rule 2010 by Respondent Mathis.

SECOND CAUSE OF ACTION

NASD Conduct Rule 3110 and FINRA Rule 2010

(Failure to Maintain Accurate Books and Records)

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.

14. NASD Conduct Rule 3110(a) requires member firms to make and preserve books, accounts, records, memoranda and correspondence in conformity with Exchange Act Rule 17a-3.
15. Exchange Act Rule 17a-3(a)(2) requires broker-dealers that transact a business in securities to make and keep current, among other records, net capital computations.
16. Mathis, as Triad's CFO and FINOP, was responsible for ensuring that Triad complied with the requirements of Exchange Act Rule 17a-3 and NASD Conduct Rule 3110.
17. Mathis prepared or caused to be prepared an inaccurate net capital computation for Triad for the period ending November 30, 2009, which misclassified a \$462,000 returned deposit item from a registered representative as an allowable asset, netted several unrelated intercompany assets and liabilities and misclassified the net debit amount as an allowable asset, and treated approximately \$44,000 of cash balances from affiliated entities as allowable when it should have been treated as non-allowable.
18. As a result, Mathis caused Triad to violate Exchange Act Rule 17a-3 and NASD Conduct Rule 3110.
19. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 3110 and FINRA Rule 2010 by Respondent Mathis.

THIRD CAUSE OF ACTION

FINRA Rule 2010

(Failure to File an Accurate FOCUS Report)

20. The Department realleges and incorporates by reference paragraphs 1 through 19 above.
21. Exchange Act Rule 17a-5 requires member firms to prepare and file periodic reports of its financial condition with FINRA, including FOCUS reports.

22. Mathis, acting as CFO and FINOP for Triad, was responsible for the preparation and filing of accurate FOCUS reports on behalf of Triad.
23. However, Mathis prepared and/or was responsible for the preparation of a materially inaccurate FOCUS report for Triad, and filed such materially inaccurate FOCUS report with FINRA for the period ending November 30, 2009.
24. Mathis caused Triad to violate Exchange Act Rule 17a-5 by filing the materially inaccurate FOCUS report for the period ending November 30, 2009.
25. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rule 2010 by Respondent Mathis.

FOURTH CAUSE OF ACTION

FINRA Rule 8210 and 2010

(Failure to Appear and Testify)

26. The Department realleges and incorporates by reference paragraphs 1 through 25 above.
27. In March 2010, FINRA commenced an examination of Triad including, among other things, a review of its financial reporting and books and records.
28. During the course of its examination, FINRA determined that it needed information from Mathis regarding his functions at Triad including, among other things, Triad's net capital calculations, Triad's books and records, and Triad's FOCUS filings.
29. Consequently, on November 30, 2010, FINRA sent Mathis a letter, via first class and certified mail addressed to Mathis at his residential address as listed in the Central Registration Depository (CRD).

30. The November 30, 2010 letter requested that Mathis appear, pursuant to FINRA Rule 8210, at FINRA's Atlanta District Office and provide on-the-record (OTR) testimony on December 22, 2010.
31. The November 30, 2010 letter sent by first class mail to Mathis at his residential CRD address was not returned. A receipt for the November 30, 2010 letter sent by certified mail to Mathis was returned indicating that it was delivered and appears to be signed by Mathis.
32. On December 8, 2010, FINRA received a letter from Mathis. In his letter, Mathis stated that he was not able to provide a response to FINRA, .
33. Mathis also stated in his letter that he had provided all of the information related to this matter and does not have access to any further information or data. Mathis further stated that he was not returning to the industry and wanted his license and registration to expire.
34. Therefore, on December 14, 2010, FINRA sent Mathis a second letter, via first class and certified mail addressed to his residential CRD address.
35. The December 14, 2010 letter requested that Mathis appear, pursuant to FINRA Rule 8210, at FINRA's Atlanta District Office and provide OTR testimony on January 5, 2011.
36. The December 14, 2010 letter sent by first class mail to Mathis at his residential CRD address was not returned. A receipt for the December 14, 2010 letter sent by certified mail to Mathis was returned indicating that it was delivered and appears to be signed by Mathis.
37. Mathis failed to appear and testify as requested by FINRA on January 5, 2011.
38. On June 11, 2012, FINRA sent Mathis a third letter, via first class and certified mail addressed to his residential CRD address.
39. The June 11, 2012 letter requested that Mathis appear, pursuant to FINRA Rule 8210, at FINRA's Atlanta District Office and provided OTR testimony on June 22, 2012.

40. The June 11, 2012 letter sent by first class mail to Mathis at his residential CRD address was not returned. The June 11, 2012 letter sent by certified mail to Mathis at his residential CRD address also was returned indicating that it was unclaimed.
41. Mathis failed to appear and testify as requested by FINRA on June 22, 2012.
42. Mathis' failure to appear and testify impeded FINRA's investigation.
43. By failing to appear and testify on January 5, 2011 and June 22, 2012, Mathis violated FINRA Rules 8210 and 2010.
44. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Respondent Mathis.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Make findings of fact and conclusions of law that Respondent Mathis committed the violations charged and alleged herein.
- B. Order that one or more of the sanctions provided under FINRA Rule 8210(a), including monetary sanctions, be imposed.
- C. Order that Respondent Mathis bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

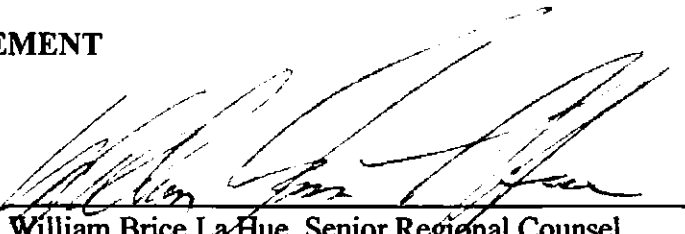
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FINRA DEPARTMENT OF ENFORCEMENT

Date: 3/3/12



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Authorized House Counsel
Admitted in NY and NJ Only

SCHEDULE A

TRIAD'S NET CAPITAL CALCULATION DEFECIENCIES

DATE	NET CAPITAL	REQUIRED NET CAPITAL	NET CAPITAL DEFICIENCY
11/20/09	\$159,571	\$287,832.60	\$128,261.60
11/23/09	\$195,280	\$304,579.93	\$109,299.93
11/30/09	\$140,326	\$293,965.67	\$153,639.67
12/01/09	\$173,381	\$280,727.67	\$76,619.00
12/02/09	\$202,786	\$282,510.87	\$79,724.87
12/03/09	\$82,967	\$257,002.67	\$174,035.67
12/04/09	\$55,594	\$309,699.53	\$254,105.53
12/07/09	\$85,994	\$278,117.67	\$192,123.67
12/08/09	\$116,222	\$257,659.93	\$141,437.93
12/09/09	\$249,585	\$283,013.67	\$33,428.67