

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ENRIQUE ROY
(CRD No. 5339904),

Respondent.

Disciplinary Proceeding
No. 2010023375101

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

March 28, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for failing to respond to requests for information, in violation of Rules 8210 and 2010. The charge that Respondent failed to notify his employer firm that he opened a brokerage account in which he had a financial interest at another FINRA-registered firm is dismissed.

Appearances

For the Department of Enforcement, Complainant, Karen E. Whitaker, Esq. and Andrew Favret, Esq.

No appearance by or on behalf of Enrique Roy.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on October 26, 2011. The Complaint charges Respondent Enrique Roy (“Roy”) with: (1) failing to disclose to his employer, Morgan Stanley Smith Barney (“Morgan Stanley”), that he opened a securities account in which he had a financial interest at TD Ameritrade, another FINRA-registered firm, and failing to disclose to TD Ameritrade that he

was associated with Morgan Stanley, in violation of NASD Conduct Rules 3050 and 2010;¹ and (2) failing to respond to requests for information FINRA staff issued pursuant to Rule 8210, in violation of FINRA Rules 8210 and 2010.²

Enforcement served Roy with copies of the Complaint and First Notice of Complaint on October 26, 2011, by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”) by first-class and certified mail.³ The United States Postal Service returned the certified mailing to FINRA because it was unclaimed. Roy did not respond to the First Notice of Complaint.

On November 30, 2011, Enforcement served Roy with copies of the Complaint and Second Notice of Complaint by mailing them to his CRD address by first-class and certified mail.⁴ The United States Postal Service returned the certified mailing to FINRA because it was unclaimed.⁵

In December 2011, Enforcement received notice of a more current residential address for Roy. Accordingly, Enforcement served copies of the Complaint and Notices of Complaint on Roy at this new address on December 16, 2011, by first-class certified mail.⁶ The United States Postal Service returned the mailing to FINRA on January 9, 2012, because it was unclaimed.⁷

¹ The Complaint also alleged that Roy exercised discretionary authority in this account. However, Enforcement withdrew this additional allegation on February 9, 2012.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. 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 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue.

³ Declaration of Karen E. Whitaker, Esq. in Support of Motion for Entry of Default Decision (“Decl.”) ¶ 25.

⁴ *Id.* ¶ 27.

⁵ *Id.* ¶ 28.

⁶ *Id.* ¶ 32.

⁷ *Id.* ¶ 33.

Roy did not answer or otherwise respond to the Complaint. Accordingly, on February 9, 2012, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), which is supported by the declaration of Karen E. Whitaker, Esq. and five attached exhibits.⁸ Roy did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer found Roy in default, granted Enforcement’s Default Motion, and deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Background

Roy first entered the securities industry with a FINRA registered firm in May 2007. In June 2009, Roy joined Morgan Stanley. He was associated with Morgan Stanley until May 21, 2010, at which time he was discharged for “failure to follow company policies.”⁹ Roy was registered with FINRA as a General Securities Representative while he was with Morgan Stanley. His registration terminated on June 18, 2010.¹⁰

B. Jurisdiction

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 after FINRA terminated Roy’s registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with Morgan Stanley, and with failing to respond to Enforcement’s

⁸ Enforcement’s exhibits are labeled CX-1 through CX-5.

⁹ FINRA staff launched the investigation that led to the Complaint in this matter upon receipt of the Uniform Termination Notice for Securities Industry Registration (Form U5) Morgan Stanley filed on Roy’s behalf. (Decl. ¶ 7.)

¹⁰ CX-1, at 4.

requests for information made during the two-year period following the termination of his FINRA registration.¹¹

C. Failure to Provide Information

The second cause of action alleges that Roy failed to respond to requests for information, which FINRA staff sent to him pursuant to FINRA Rule 8210. Rule 8210 grants FINRA the right to require members and persons subject to FINRA's jurisdiction "to provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff ... with respect to any matter involved in [an] investigation, complaint, examination, or proceeding."¹² Rule 8210 enables FINRA to conduct meaningful examinations and investigations. FINRA relies heavily on Rule 8210, and the Securities and Exchange Commission has "repeatedly stressed the importance of cooperation in [FINRA] investigations ... [and] emphasized that the failure to provide information undermines [FINRA's] ability to carry out its self-regulatory functions."¹³ Indeed, Rule 8210 is widely accepted as FINRA's most important tool for investigating potential wrongdoing primarily because FINRA lacks subpoena authority and has limited power to compel the production of evidence from its members.¹⁴ FINRA is therefore entitled to the "full and prompt cooperation" of all persons subject to its jurisdiction when investigative requests are made by members of its staff.¹⁵

¹¹ 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").

¹² FINRA Rule 8210(a)(1); see also *Michael J. Markowski*, Exchange Act Rel. No. 43259, 2000 SEC LEXIS 1860, at *15 (Sept. 7, 2000) ("The NASD has the right to request information and require cooperation from its members and persons associated with them."), *aff'd*, 2001 U.S. App. LEXIS 27007 (D.C. Cir. Dec. 21, 2001).

¹³ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (internal citations omitted).

¹⁴ See *John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at *57 n.67 (Nov. 12, 2010), *appeal docketed*, No. 10-15918 (11th Cir. Dec. 23, 2010).

¹⁵ *Michael David Borth*, Exchange Act Rel. No. 31602, 1992 SEC LEXIS 3248, at *7 (Dec. 16, 1992).

In this case, Roy failed to respond in any manner to two Rule 8210 requests for information. FINRA staff sent both requests to Roy by first-class and certified mail at his CRD address. The first request was dated December 13, 2010, and the second was dated February 16, 2011.¹⁶ Each request sought information about the outside brokerage account Roy had opened for customer S.K. at TD Ameritrade.

The Hearing Officer finds that Roy violated Rules 8210 and 2010 by failing to respond in any manner to the requests for information.

D. Failure to Give Notice of Outside Brokerage Account

NASD Rule 3050(c) requires that an associated person “prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member.” While Rule 3050(c) applies to accounts held by a person associated with a member and maintained by another member, Rule 3050(e) extends the written notification requirement of Rule 3050(c) to any accounts over which an associated person has a financial interest.¹⁷

In this case, Enforcement alleged that Roy opened an account at TD Ameritrade on behalf of customer S.K., who had been one of his customers at Morgan Stanley. S.K. owned the account.¹⁸ Roy did not have an ownership interest in the account.

The Complaint further alleged that once Roy established the TD Ameritrade account for S.K., “Roy logged into S.K.’s TD Ameritrade account ... and placed numerous orders ... on S.K.’s behalf.” The Complaint does not allege that Roy had a financial interest in the account.

¹⁶ Compl. ¶¶ 10-15.

¹⁷ *Dep’t of Mkt. Reg. v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *35-36 (NAC July 28, 2011).

¹⁸ Decl. ¶ 8.

However, in the declaration Enforcement submitted in support of its motion for entry of a default decision, Enforcement's counsel states that S.K. paid Roy at least \$10,000 to manage the account between October 2009 and February 2010.¹⁹ The declaration further states that Roy had a financial interest in the account due to this payment.

The Hearing Officer concludes he need not reach the issue of whether these facts alone are sufficient to support a finding that Roy acquired a "financial interest" in the account. Although the facts tend to support the inference that Roy exercised some degree of control over the account, Enforcement withdrew the claim that Roy exercised discretion in the account, and the Complaint does not expressly allege that Roy had a financial interest in the account. Accordingly, and in light of the bar imposed for the other violation, the Hearing Officer will dismiss the first cause of action.

III. Sanctions

For failing to respond to FINRA Rule 8210 requests for information, the FINRA Sanction Guidelines provide that a bar should be "standard" when there is a complete failure to respond. The Guidelines further direct adjudicators to consider the "[i]mportance of the information requested as viewed from FINRA's perspective."²⁰

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given the facts and circumstances of this case, including a lack of mitigating factors that would warrant a lesser sanction. The information the staff sought was important to FINRA's investigation of serious misconduct. A bar remedies the risk that Enforcement will not be able to obtain information necessary to the protection of

¹⁹ Decl. ¶ 10.

²⁰ FINRA Sanction Guidelines 33 (2011), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

investors and will serve to deter others from failing to provide Enforcement with information requested under Rule 8210 at the time such requests are made. Accordingly, the Hearing Officer will bar Roy from associating with any FINRA member firm in all capacities for violating FINRA Rules 8210 and 2010.

IV. Order

Enrique Roy is barred from associating with any member firm in any capacity for failing to respond to two requests for information, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA. The first cause of action alleging that Roy failed to give his employer notice of an outside brokerage account is dismissed.

A handwritten signature in black ink, appearing to read 'A. Perkins', is written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Enrique Roy (*via overnight courier and first-class mail*)
Karen E. Whitaker, Esq. (*via electronic and first-class mail*)
Andrew Favret, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,
COMPLAINANT,

V.

ENRIQUE ROY (CRD NO. 5339904),
RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2010023375101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From October 2009 through February 2010, while registered with FINRA member firm Morgan Stanley Smith Barney, Respondent Enrique Roy opened a brokerage account and executed discretionary securities transactions in an account at another FINRA member firm. Roy failed to disclose the existence of this account to or receive written acceptance of this account from his employer firm, in violation of NASD Rules 3050 and 2510 and FINRA Rule 2010.
2. In addition, in December 2010 and February 2011, in connection with FINRA's investigation of Roy's outside brokerage account activity, Roy failed to respond to two information requests sent to him by FINRA staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

JURISDICTION

3. Roy first became registered with FINRA as a General Securities Representative in May 2006, through registered firm Citigroup Global Markets, Inc. ("Citigroup")(CRD 7059). In June 2009, he was registered with Morgan Stanley Smith Barney (CRD 149777). On June 18, 2010, Morgan Stanley Smith Barney filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Roy.
4. Although Respondent has not been associated with a FINRA-registered firm since June 18, 2010, 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 date upon which he ceased to be associated with a FINRA-registered firm, and (2) the Complaint charges him with misconduct committed while he was associated with a firm registered with FINRA and for failing to provide requested information during the two-year period after the date upon which he ceased to be associated with a FINRA-registered firm.

FIRST CAUSE OF COMPLAINT

(Failure to Disclose Outside Securities Account and Discretionary Trading)
Violation of NASD Rules 3050 and 2510 and FINRA Rule 2010

5. Paragraphs 1 through 4 of this Complaint are realleged and incorporated by reference.
6. In August 2009, Roy suggested that S.K. transfer \$450,000 to an account he had set up in S.K.'s name at TD Ameritrade. From October 2009 through February 2010, Roy logged into S.K.'s TD Ameritrade account, exercised trading discretion, and placed numerous orders in S.K.'s TD Ameritrade account on S.K.'s behalf. Roy and S.K. communicated through numerous text messages and cell phone calls documenting Roy's discretionary trading activity in S.K.'s TD Ameritrade account.

7. NASD Rule 3050(c) requires associated persons to notify both their employer member and the executing member of their association with the employer member in writing prior to the opening of an account or placing an initial order. NASD Rule 3050 (c) clarifies that NASD Rule 3050(c) applies to accounts or orders in which an associated person has either a financial interest or discretionary authority. From August 2009 to February 2010, Roy did not disclose the existence of the TD Ameritrade securities account over which he exercised discretionary authority to his employer firm Morgan Stanley Smith Barney. In addition, Roy failed to receive written acceptance of the account as discretionary from his employer firm Morgan Stanley Smith Barney.
8. By reason of the foregoing, Roy violated NASD Rules 3050 and 2510 and FINRA Rule 2010.

SECOND CAUSE OF COMPLAINT

(Failure to Respond)

Violation of FINRA Rules 8210 and 2010

9. Paragraphs 1 through 8 of this Complaint are realleged and incorporated by reference.
10. On December 13, 2010, pursuant to FINRA Rule 8210, FINRA Staff investigating the allegations set forth in paragraphs 6 to 8 above sent an information request letter to Roy at his address of record on FINRA's Central Registration Depository (CRD), (CRD Address).
11. The request letter was sent via First Class Mail and Certified Mail, return receipt requested, and imposed a response deadline of December 28, 2010. The letter sent via First Class mail was not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested was returned to FINRA, marked "unclaimed."

12. Roy did not respond to the initial request for information by the stated deadline of December 28, 2010.
13. As a result, on February 16, 2011, again pursuant to FINRA Rule 8210, FINRA Staff sent a second information request to Roy at his CRD address.
14. The second request letter was again sent via First Class Mail and Certified Mail, return receipt requested, and imposed a response deadline of March 2, 2011. The letter sent via First Class mail was not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested, was returned to FINRA, marked "unclaimed."
15. Roy did not respond to this second request for information by the stated deadline of March 2, 2011. To date, Roy has never provided a response to the initial or second request for information.
16. By reason of the foregoing, Roy violated FINRA Rules 8210 and 2010.

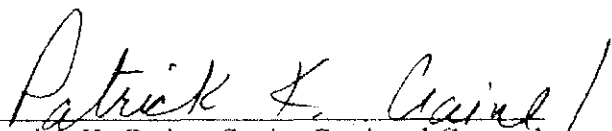
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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

October 26, 2011


Patrick K. Craine, Senior Regional Counsel
Andrew Favret, Regional Chief Counsel / *by jdp/wp.*
FINRA Department of Enforcement
12801 North Central Expressway, Suite 1050
Dallas, Texas 75243
Phone No.: 972.716.7608
Fax No.: 972.716.7646
patrick.craine@finra.org