

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID CHARLES KAUFFMAN
(CRD No. 2365373),

Respondent.

Disciplinary Proceeding
No. 2010024315801

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

August 13, 2013

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information, documents, and testimony in violation of FINRA Rules 8210 and 2010.

Appearances

For the Department of Enforcement, Complainant: Cynthia A. Kittle, Esq., Scott M. Andersen, Esq., and Jacqueline D. Whelan, Esq.

For David Charles Kauffman, Respondent: no appearance.

DECISION

David Charles Kauffman was formerly registered with FINRA as a General Securities Principal and a General Securities Representative at FINRA member firm First Allied Securities, Inc. ("FAS" or the "Firm") from March 2006 through September 2010. The Firm terminated Kauffman for violating Firm policies pertaining to his personal private securities transactions, his use of unapproved email addresses, and introducing clients to individuals associated with non-approved investment opportunities.

After FAS reported to FINRA the circumstances of Kauffman's termination, FINRA staff began an investigation into his conduct. In connection with that investigation, Kauffman failed to

respond to certain staff requests for information, documents, and testimony that the staff issued pursuant to FINRA Rule 8210.

As a result, Enforcement filed a Complaint with the Office of Hearing Officers, charging Kauffman with violating FINRA Rules 8210 and 2010. FINRA Rule 8210 grants FINRA staff the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in an investigation, complaint, examination, or proceeding. FINRA Rule 2010 requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade.

Kauffman did not answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a motion for entry of a default decision. The motion is supported by the Declarations of Han T. Nguyen¹ and Cynthia A. Kittle² and nine exhibits.

For the reasons discussed below, the Hearing Officer grants Enforcement's motion.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws³ because (1) the Complaint was filed within two years after Kauffman was last associated with a FINRA member,⁴ and (2) the Complaint charges him with failing to respond to requests for information that FINRA staff issued during the two-year period after he ceased to be registered or associated with a FINRA member.

¹ Hereinafter referred to as "Nguyen Decl." Nguyen was the FINRA Department of Member Regulation Examination Manager assigned to the investigation that led to the filing of this disciplinary proceeding. Nguyen Decl. ¶ 1.

² Hereinafter referred to as "Kittle Decl."

³ 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").

⁴ The Complaint was filed on April 8, 2013, and alleges that Kauffman was registered until December 1, 2011. Compl. ¶¶ 2-3. Complainant's Exhibit ("CX-") 1 (Web CRD printout for Kauffman), at 6, however, reflects that Kauffman's last registration was terminated several months earlier, on June 13, 2011, though his employment at a member firm continued until December 1, 2011.

II. Enforcement's Motion for Entry of a Default Decision Is Granted

Enforcement filed the attached Complaint with the Office of Hearing Officers on April 8, 2013. On that day, Enforcement served Kauffman with a copy of the Notice of Complaint and Complaint by certified mail, return receipt requested, at his residential address as reflected in the Central Registration Depository ("CRD Address") and at an alternate address that FINRA staff located through a public records search ("Second Address").⁵ The certified mail receipt for the mailing sent to the CRD Address was returned with an illegible signature.⁶ The certified mailing sent to the Second Address was returned with the notation "Unclaimed."⁷

Kauffman did not respond to the Complaint by May 6, 2013, the deadline specified in the Notice of Complaint.⁸ Accordingly, on May 8, 2013, Enforcement served Kauffman with a Second Notice of Complaint and Complaint by certified mail, return receipt requested, at his CRD Address and Second Address.⁹ The certified mailings to the CRD Address and Second Address were returned with the notation, "Unclaimed."¹⁰ Kauffman did not respond to the Complaint by May 28, 2013, the deadline specified in the Second Notice of Complaint.¹¹ To date, Kauffman has not filed an answer to the Complaint with the Office of Hearing Officers.

On July 8, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Kauffman has not responded to the motion.

The Hearing Officer concludes that Kauffman received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1), and he

⁵ Kittle Decl. ¶¶ 2-3; CX-4.

⁶ Kittle Decl. ¶ 4; CX-5.

⁷ Kittle Decl. ¶ 4; CX-6.

⁸ Kittle Decl. ¶ 5; CX-4, at 2.

⁹ Kittle Decl. ¶ 6; CX-7.

¹⁰ Kittle Decl. ¶ 7; CX-8; CX-9.

¹¹ Kittle Decl. ¶ 8; CX-7, at 1.

therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.

III. Findings of Fact

The Hearing Officer treats the allegations in the attached Complaint as admitted (with one exception),¹² pursuant to FINRA Rules 9215(f) and 9269(a).

A. David Charles Kauffman

Kauffman began his career in the securities industry in or about May 1993.¹³ Over the course of his career, Kauffman has been registered with 13 FINRA member firms.¹⁴ On March 7, 2006, he became employed and registered as a General Securities Representative and General Securities Principal with FAS. Kauffman remained employed with FAS until the Firm discharged him on September 7, 2010, for violating Firm policies pertaining to "his personal private securities transactions," his use of unapproved email addresses, and introducing clients to "individuals associated with non-approved investment opportunities."¹⁵ Thereafter, he was registered with another FINRA member firm through June 13, 2011,¹⁶ and employed by that firm until December 1, 2011.¹⁷ He is not presently registered or associated with a FINRA member.¹⁸

¹² The Hearing Officer declines to treat as admitted the allegation that Kauffman was registered with a FINRA member firm as a General Securities Principal and General Securities Representative until December 1, 2011. Compl. ¶¶ 2–3. See note 4, *supra*.

¹³ CX-1, at 3, 12.

¹⁴ CX-1, at 5.

¹⁵ CX-1, at 6.

¹⁶ CX-1, at 6.

¹⁷ CX-1, at 6.

¹⁸ Compl. ¶ 3; CX-1, at 3.

B. Kauffman's Failure to Provide Information, Documents, and On-the-Record Testimony

In September 2010, FAS made two filings with FINRA disclosing the reasons it had terminated Kauffman.¹⁹ FINRA staff then began an examination into the conduct relating to Kauffman's termination,²⁰ including whether he had engaged in private securities transactions in connection with several private placement offerings without providing written notice to the Firm or receiving Firm approval. One of the offerings was made by an entity named Gulf Coast Oil & Rig, LLC ("Gulf Coast").²¹ As set forth below, pursuant to FINRA Rule 8210, the staff sought information, documents, and testimony from Kauffman to determine, among other things, his role and compensation in connection with the private securities transactions, as well as the status of Gulf Coast's business.²²

Initially, Kauffman cooperated with the examination by providing some information and documents, though not completely.²³ Accordingly, pursuant to Rule 8210, FINRA staff issued Kauffman information and document requests and requests that he appear for an on-the-record interview. These subsequent requests serve as the basis for the instant disciplinary proceeding.

1. The July and August 2011 Information and Document Requests

On or about July 21, 2011, pursuant to FINRA Rule 8210, FINRA staff issued a written request to Kauffman to provide information and documents relating to its investigation of

¹⁹ Compl. ¶ 5; Nguyen Decl. ¶ 4.

²⁰ Compl. ¶ 5; Nguyen Decl. ¶ 5.

²¹ Compl. ¶ 5; Nguyen Decl. ¶ 5.

²² Compl. ¶ 5; Nguyen Decl. ¶ 6.

²³ The Complaint and Nguyen's declaration are not consistent in their recitation of when information and documents were sought and received. According to the Complaint, Kauffman provided information and documents in or about December 2010 and a partial response in or about May 2011. Compl. ¶ 6. Nguyen's declaration, however, does not reference a December 2010 response. Instead, Nguyen states that Kauffman responded on May 19 and June 1, 2011, but failed to provide certain documents that had been requested. Nguyen Decl. ¶ 7. By contrast, the Complaint does not mention a June 1, 2011 response. Because Respondent is not charged with violating Rule 8210 for failing to respond completely to these earlier requests, it is not necessary for the Hearing Officer to resolve this inconsistency.

Kauffman's participation in the offer and sale of interests in Gulf Coast.²⁴ The request, which was sent to Kauffman's CRD Address, set a response deadline of August 4, 2011.²⁵ Kauffman did not respond to this request.²⁶ On August 5, 2011, pursuant to FINRA Rule 8210, the staff issued a follow-up written request, again asking that Kauffman provide information and documents relating to its investigation of his participation in the offer and sale of interests in Gulf Coast.²⁷ The request was sent to Kauffman's CRD Address and set a response deadline of August 19, 2011.²⁸ Kauffman never responded to this request, either.²⁹

2. The July and September 2011 Requests for On-the-Record Testimony

In connection with its investigation, on or about July 21, 2011, pursuant to Rule 8210, FINRA staff sent Kauffman a written request to appear for on-the-record testimony on August 23, 2011, at FINRA's Los Angeles, California, District office.³⁰ The request was sent to Kauffman's CRD Address.³¹ After receiving the request, Kauffman and FINRA staff had a series of communications in which Kauffman, who claimed to be unemployed, sought to postpone his testimony until he could find employment and afford to hire an attorney. He initially told FINRA staff that he hoped to do so within six months and sought an extension of that length. Later, he said he would appear for testimony after he found employment and "put money towards an attorney." FINRA staff denied the postponement request and reiterated to Kauffman in writing

²⁴ Compl. ¶ 6; Nguyen Decl. ¶ 8.

²⁵ Compl. ¶ 6; Nguyen Decl. ¶ 8. On or about July 22, 2011, Kauffman signed for the certified mailing. Compl. ¶ 6; Nguyen Decl. ¶ 8.

²⁶ Compl. ¶ 6; Nguyen Decl. ¶ 9.

²⁷ Compl. ¶ 8; Nguyen Decl. ¶ 10.

²⁸ Compl. ¶ 8; Nguyen Decl. ¶ 10. On August 6, 2011, Kauffman signed for the certified mail. Compl. ¶ 10; Nguyen Decl. ¶ 10.

²⁹ Compl. ¶ 8; Nguyen Decl. ¶ 11.

³⁰ Compl. ¶ 7; Nguyen Decl. ¶ 12.

³¹ Compl. ¶ 7; Nguyen Decl. ¶ 12. On or about July 22, 2011, Kauffman signed for the certified mailing. Compl. ¶ 7; Nguyen Decl. ¶ 12.

that he was required to appear and testify on August 23, 2011.³² Kauffman failed to appear for testimony³³ and did not otherwise contact FINRA staff.³⁴

On September 15, 2011, pursuant to Rule 8210, the staff issued a second written request to Kauffman to appear for on-the-record testimony.³⁵ The request was sent to his CRD Address and scheduled his testimony for September 29, 2011.³⁶ Kauffman failed to appear for his testimony.³⁷

IV. Conclusions of Law

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person “to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation” in connection with any investigation. The Rule is crucial to FINRA’s ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.³⁸ They are not permitted to set

³² Nguyen Decl. ¶ 13.

³³ Compl. ¶ 7.

³⁴ Nguyen Decl. ¶ 14.

³⁵ Compl. ¶ 9; Nguyen Decl. ¶ 15.

³⁶ Compl. ¶ 9; Nguyen Decl. ¶ 15. The U.S. Postal Service returned the certified mailing and indicated that it was refused. Compl. ¶ 9; Nguyen Decl. ¶ 15.

³⁷ Compl. ¶ 9; Nguyen Decl. ¶ 16.

³⁸ See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, Exchange Act Rel. No. 49255, 2004 SEC LEXIS 330 (Feb. 13, 2004) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted). See also *Morton Bruce Erenstein*, 316 F. App’x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. 2008) (“[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.”).

conditions on their compliance.³⁹ Further, a failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.⁴⁰ It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.⁴¹

In this case, pursuant to FINRA Rule 8210, FINRA staff sent Kauffman two requests seeking information and documents, and two requests seeking his testimony. All four requests were sent to his CRD Address. He signed the certified mail receipts for the July 21 and August 5, 2011 information and document requests and for the July 21, 2011 testimony request. Kauffman failed to respond to any of the four requests. Instead, he tried to postpone his on-the-record testimony after receiving the July 21, 2011 testimony request (initially suggesting a six month postponement) until such time as he could obtain employment and retain counsel. He never provided FINRA staff with firm, alternative, suggested dates for his testimony. Kauffman had no right to impose conditions as a pre-requisite to complying with FINRA staff's testimony request, and FINRA staff properly refused to grant a postponement under these circumstances.⁴²

Accordingly, the Hearing Officer concludes that Kauffman had actual notice of the July 21 and August 5, 2011 information and document requests and of the July 21, 2011 testimony request. He is also deemed to have received all four requests pursuant to Rule 8210(d). Further,

³⁹ See, e.g., *CMG Institutional Trading*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *26 (Jan. 30, 2009).

⁴⁰ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. 2009).

⁴¹ See *CMG Institutional Trading*, 2009 SEC LEXIS 215, at *30.

⁴² Cf. *Dep't of Enforcement v. Ryerson*, No. C9B040033, 2005 NASD Discip. LEXIS 14, at *29 (OHO Jan. 24, 2005) (finding that respondent violated Rule 8210 by not appearing for scheduled testimony because "[a]lthough Respondent's desire to obtain counsel was understandable, there is no absolute right to counsel in NASD investigations.").

by failing to provide information and documents, and by failing to appear for an on-the-record interview, he violated FINRA Rules 8210 and 2010.

V. Sanctions

FINRA's Sanction Guidelines ("Guidelines") provide that, for violating Rule 8210, a bar is appropriate when an individual provides a partial but incomplete response unless the person demonstrates that the information provided substantially complied with all aspects of the request.⁴³ The Guidelines further provide that where mitigation exists, the adjudicator can consider a suspension of up to two years.⁴⁴ Finally, the Guidelines identify several Principal Considerations when the respondent has provided a partial but incomplete response: the importance, from FINRA's perspective, of the information not provided; whether the information provided was relevant and responsive to the request; the number of requests the staff made; the time respondent took to respond; the degree of regulatory pressure required to obtain a response; and whether the respondent gave valid reasons for the response's deficiencies.⁴⁵

Applying the relevant considerations to this case, a bar is the appropriate sanction. Before it sent Kauffman the four requests at issue here, FINRA staff requested, and obtained, partial responses from him relating to the same subject as the later requests. Those initial requests, and Kauffman's response, were part of the same investigation that resulted in the instant disciplinary proceeding. Therefore, the Hearing Officer concludes that the Sanction Guidelines governing partial but incomplete responses are applicable to Kauffman's Rule 8210 violations.⁴⁶

⁴³ FINRA Sanction Guidelines 33 (2011), available at www.finra.org/sanctionguidelines.

⁴⁴ *Id.*

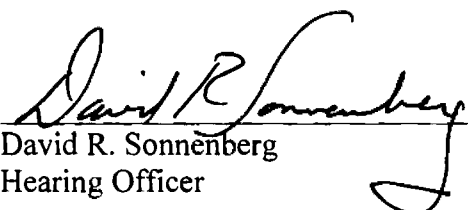
⁴⁵ *Id.*

⁴⁶ See *Kent M. Houston*, Exchange Act Rel. No. 66014, 2011 SEC LEXIS 4491, at *24-26 (Dec. 20, 2011), modified on remand sub nom. *Dep't of Enforcement v. Houston*, No. 2006005318801, 2013 FINRA Discip. LEXIS 3 (NAC Feb. 22, 2013), appeal docketed, SEC Admin. Proceeding No. 3-14175r (Mar. 25, 2013).

According to FINRA staff, the information, documents, and testimony sought by the four requests were important. The requests were intended to gather information from Kauffman regarding his roles and compensation in connection with the sales of Gulf Coast to investors. From the staff's perspective, this information was necessary to assess whether Kauffman had engaged in conduct that violated NASD or FINRA rules or the federal securities laws and rules. Further, according to the staff, his failure to respond to the requests impeded the staff's ability to make that determination.⁴⁷ Finally, no mitigation exists that warrants a sanction less than a bar. Accordingly, the Hearing Officer concludes that the appropriate sanction is a bar.

VI. Order

David Charles Kauffman is barred from associating with any member firm in any capacity for failing to provide information, documents, and testimony, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.


David R. Sonnenberg
Hearing Officer

Copies to:

David Charles Kauffman (*via overnight courier and first-class mail*)
Cynthia A. Kittle, Esq. (*via electronic mail and first-class mail*)
Scott M. Andersen, Esq. (*via electronic mail*)
Jacqueline D. Whelan, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

⁴⁷ Nguyen Decl. ¶ 17; Kittle Decl. ¶ 9.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

David Charles Kauffman
(CRD No. 2365373),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010024315801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent David Charles Kauffman failed to respond to a request for information and documents and failed to appear and testify in an on-the-record interview as required pursuant to FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. From March 7, 2006 to September 7, 2010, Kauffman was associated with FINRA member First Allied Securities, Inc. (FAS) in the capacity of a General Securities Principal and General Securities Representative. He then was registered with another FINRA member from February 10, 2011 to December 1, 2011, in the same capacities.

3. Although Kauffman is no longer registered or associated with a FINRA member, 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 Kauffman's registration with a member firm, namely, December 1, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member or with failing to respond to FINRA requests for information and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

CAUSE OF ACTION

**(Failing to Provide Information and Documents and Failing to Appear for Testimony)
(FINRA Rules 8210 and 2010)**

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

5. On or about September 13, 2010, FAS filed a Rule 3070 report in which it disclosed that it had terminated Kauffman's registrations on the grounds that he had violated Firm policies pertaining to private securities transactions and the use of unapproved email addresses, and because Kauffman introduced Firm customers to non-approved investments. On or about September 15, 2010, the Firm filed a Form U5 on Kauffman's behalf in which it disclosed the foregoing information. FINRA then initiated an examination concerning possible violations of securities laws and FINRA and NASD Rules by Kauffman in connection with several private placement offerings of securities, including Gulf Coast Oil & Rig, LLC (Gulf Coast). In connection with that examination, FINRA requested information and documents and that Kauffman appear for an on-the-record interview, pursuant to FINRA Rule 8210.

6. Kauffman initially cooperated with the examination by providing information and documents in or about December 2010, and a partial response in or about May 2011. On or about July 21, 2011, pursuant to FINRA Rule 8210, the staff issued a written request to Kauffman to provide information and documents relating to its investigation of Kauffman's

participation in the offer and sale of interests in Gulf Coast (First Rule 8210 Request), via first class and certified mail, return receipt requested, to his residential address of record reflected in the FINRA Central Registration Directory (CRD Address). The letter requested a response by August 4, 2011. On or about July 22, 2011, Kauffman signed for the certified mailing; the first class mailing was not returned. To date, FINRA has not received a response from Kauffman to the First Rule 8210 Request.

7. On or about July 21, 2011, pursuant to FINRA Rule 8210, the staff issued a written request to Kauffman to appear for on-the-record testimony on August 23, 2011, at 9:00 a.m. at the FINRA District 2 offices in downtown Los Angeles, California, via first class and certified mail, return receipt requested, to Kauffman's CRD address. On or about July 22, 2011, Kauffman signed for the certified mailing; the first class mailing was not returned. Kauffman did not appear for testimony on August 23, 2011.

8. On or about August 5, 2011, pursuant to FINRA Rule 8210, the staff issued a follow-up written request to Kauffman to provide information and documents relating to its investigation of the Kauffman's participation in the offer and sale of interests in Gulf Coast, via first class and certified mail, return receipt requested, to his CRD Address (Second Rule 8210 Request), as had been requested in the First Rule 8210 Request. The letter requested a response by August 19, 2011. On or about August 6, 2011, Kauffman signed for the certified mailing; the first class mailing was not returned. To date, FINRA has not received a response from Kauffman to the Second Rule 8210 Request.

9. On or about September 15, 2011, pursuant to FINRA Rule 8210, the staff issued a second written request to Kauffman to appear for on-the-record testimony on September 29, 2011, via first class and certified mail, return receipt requested, to his CRD address. The United

States Postal Service returned the certified mailing and indicated that it was refused; the first class mailing was not returned. Kauffman did not appear for testimony on September 29, 2011.

10. By failing to provide information and documents and by failing to appear for on-the-record interviews, as requested pursuant to FINRA Rule 8210, Kauffman committed separate and distinct violations of FINRA Rule 8210. By violating FINRA Rule 8210, Kauffman engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 8, 2013


Cynthia A. Kittle, Senior Regional Counsel
Scott M. Andersen, Deputy Regional Chief Counsel
Jacqueline D. Whelan, Regional Chief Counsel
FINRA Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2616; Fax No. (213) 617-1570
Cynthia.Kittle@finra.org