

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GABRIEL MERO, JR.  
(CRD No. 5681132),

Respondent.

Disciplinary Proceeding  
No. 2010024601702

Hearing Officer – RSH

**Default Decision**

January 6, 2012

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

**Appearances**

Sandra J. Harris, Deputy Regional Chief Counsel, Los Angeles, CA, 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 Gabriel Mero, Jr. (“Mero”) after receiving a Uniform Termination Notice for Securities Industry Registration (“Form U5”) for Respondent. Wells Fargo Investments, LLC (“Wells Fargo”), a FINRA-registered firm, filed the Form U5 on October 6, 2010, terminating Respondent’s registration because he had violated company policy by

borrowing money from a client.<sup>1</sup> Enforcement filed the Complaint against Respondent after he failed to respond to multiple requests for information concerning the information 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 August 15, 2011. Respondent did not answer or otherwise respond to the Complaint. Consequently, on November 8, 2011, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Sandra J. Harris<sup>3</sup> and eight exhibits. Respondent did not reply to the motion.<sup>4</sup>

## **II. Jurisdiction**

Respondent was registered as a General Securities Representative with Wells Fargo from June 12, 2009 to September 20, 2010, when Wells Fargo filed a Form U5, terminating his registration. Respondent has not been associated with any FINRA-registered firm since his termination from Wells Fargo.<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 charges him with failing to respond to FINRA's requests for information made during the

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<sup>1</sup> Complainant's Exhibit ("CX")-2.

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

<sup>3</sup> "Decl."

<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> CX-1.

two-year period following the termination of his registration with a FINRA-registered firm.<sup>6</sup>

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

On August 15, 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"), and to an alternate address provided by Respondent ("Second Address"). The first-class mailing to the CRD Address was not returned to Enforcement; however, the certified mailing receipt was returned signed by someone other than Respondent. The first-class mailing to the Second Address was not returned, and the certified mailing to the Second Address was returned unclaimed. Respondent did not respond to the Complaint by September 12, 2011, the deadline specified in the Notice of Complaint.<sup>7</sup>

On September 13, 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 and the Second Address. The first-class mailing was not returned to Enforcement; however, the certified mailing was returned, marked, "notify sender of new address at [Second Address]." The first-class mailing to the Second Address was not returned; however, the certified mailing receipt was returned with a signature. Respondent did not respond to the Complaint by September 30, 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,

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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> Decl. ¶ 5; CX-3, 4, 5.

<sup>8</sup> Decl. ¶ 6; CX-6, 7, 8.

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.

#### **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 October 26, 2010, FINRA staff requested, pursuant to Rule 8210, that Respondent provide information and documents concerning a loan made by a customer to Respondent as reported on the Form U5 filed by Wells Fargo. FINRA sent the letter by first-class and certified mail to Respondent at his CRD address, and requested that Respondent submit the information by November 9, 2010. After Respondent failed to respond, FINRA sent a second letter, dated January 10, 2011, requesting the same information and documents. The two letters were both signed for; however, Respondent failed to respond to either of them.

On February 14, 2011, FINRA staff 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 March 10, 2011. In a letter postmarked March 9, 2011, one day before Respondent would have been suspended, and nearly five months after FINRA's first request for information, he submitted a response to FINRA's request letters.

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 2010.<sup>9</sup> The submission of information after FINRA institutes proceedings is no defense to a finding of violation. FINRA should not have to bring a proceeding in order to obtain information requested pursuant to Rule 8210.<sup>10</sup> A violation of Rule 8210 is also a violation of Rule 2010.<sup>11</sup>

**B. Failure to Respond to Requests for Information and Documents**

Based on information Respondent provided in response to FINRA's first request, FINRA sent Respondent a request for additional information and documents concerning the customer's loan to him. The Second Cause of Action alleges that Respondent failed to respond in any way to this additional request, and thereby violated Rules 8210 and 2010. On May 17, 2011, FINRA staff sent Respondent a letter, by first-class and certified mail, to Respondent's CRD Address, and to the Second Address, which Respondent had confirmed in his response to the prior information requests as his then-current residential address. The letter requested, pursuant to Rule 8210, that Respondent provide additional information and documents concerning the customer's loan to Respondent. Neither of the letters sent by first-class mail was returned. A receipt for the certified mailing that was sent to Respondent's CRD Address was returned, signed by "Elizabeth Mero." The mailing sent to the Second Address was returned unclaimed. Respondent did not respond to the May 17 letter.

On June 7, 2011, FINRA staff sent Respondent a second letter, by first-class and certified mail, to Respondent's CRD Address, and to the Second Address. The letter requested, pursuant to Rule 8210, that Respondent provide the information and

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<sup>9</sup> *Ashton Noshir Gowadia*, Exchange Act Rel. No. 40410, 1998 SEC LEXIS 1887 (Sept. 8, 1998).

<sup>10</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>11</sup> *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at \*5 (N.A.C. Nov. 2, 2001).

documents that had been requested in the May 17 letter. Neither of the letters sent by first-class mail was returned. A receipt for the certified mailing that was sent to the Second Address was returned, signed by “Elizabeth Mero.” The mailing sent to the Respondent’s CRD Address was returned unclaimed. Respondent did not respond to the June 7 letter.

The Hearing Officer finds that the foregoing facts establish that Respondent violated Rule 8210 by failing to provide information and documents. A violation of Rule 8210 is also a violation of Rule 2010.<sup>12</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>13</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>14</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>15</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 one day before his suspension was to become effective.

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<sup>12</sup> *Hoeper*, 2001 NASD Discip. LEXIS 37, at \*5.

<sup>13</sup> *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

<sup>14</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>15</sup> FINRA Sanction Guidelines 33 (2011 ed.), [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

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 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’s loan to the Respondent. 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, nearly five 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 Provide Information and Documents**

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>16</sup> When an individual fails to provide information, FINRA’s ability to perform its regulatory functions is subverted.<sup>17</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>18</sup> Respondent failed to respond in any manner to FINRA’s request for information and documents. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

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<sup>16</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).

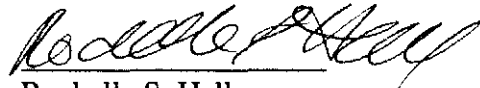
<sup>17</sup> *Hannan*, 1998 SEC LEXIS 1955, at \*9.

<sup>18</sup> Sanction Guidelines 33.

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

**VI. Order**

For violating Rules 8210 and 2010 by failing to provide requested information in a timely manner, and failing to provide information and documents, Gabriel Mero, Jr. 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.

  
Rochelle S. Hall  
Hearing Officer

Copies to: Gabriel Mero, Jr. (via first-class and overnight mail)  
Sandra J. Harris, Esq. (via electronic and first-class mail)  
Mark P. Dauer, Esq. (via electronic mail)  
David R. Sonnenberg, Esq. (via electronic mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Gabriel Mero, Jr. (CRD No. 5681132),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2010024601702

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. In connection with FINRA's investigation concerning an alleged loan by a bank customer, Respondent Gabriel Mero, Jr. failed to timely respond to the staff's initial Rule 8210 requests for information and documents, and subsequently failed to respond to additional Rule 8210 requests from the staff, in violation of FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. Respondent was associated with FINRA member Wells Fargo Investments, LLC (the Firm) as a General Securities Representative from June 12, 2009 to September 20, 2010. He was also employed by the Firm's affiliated bank.

3. Although Respondent has not been associated with a FINRA member firm since September 20, 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 member and (2) the Complaint charges him with failing to timely respond and failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

**FIRST CAUSE OF ACTION**  
**Failure to Timely Respond to Rule 8210 Requests**  
**for Information and Documents**  
**(Violation of FINRA Rules 8210 and 2010)**

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

5. FINRA staff issued two letters to Respondent pursuant to FINRA Rule 8210 as part of an investigation concerning an alleged loan made by a bank customer to Respondent while he was associated with the Firm and employed by its affiliated bank.

6. On or about October 26, 2010, FINRA's CRG staff issued the first Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD residential address: [REDACTED]

[REDACTED] The letter contained a response due date of November 9, 2010. The first class letter was not returned. The certified mail receipt was signed by Respondent on or about October 30, 2010. Respondent did not respond to the October 26, 2010 letter by the due date of November 9, 2010.

7. On or about January 10, 2011, FINRA's CRG staff issued the second Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD address. The letter contained a response due date of January 24, 2011. The first class letter was not returned. The certified mail receipt was signed on or

about January 15, 2011, but the signature is illegible. Respondent did not respond to the January 10, 2011 letter by the due date of January 24, 2011.

8. As a result of Respondent's failure to respond to the staff's two Rule 8210 request letters, on February 14, 2011, the staff initiated a Rule 9552 proceeding against Respondent. The Notice of Suspension was served by FedEx and first class mail on Respondent's CRD address and on an alternate address identified by the staff [REDACTED]

9. The Notice of Suspension stated, among other things, that Respondent would be suspended from associating with any FINRA member in any capacity unless he complied with the Rule 8210 requests of October 26, 2010 and January 10, 2011, prior to the suspension date of March 10, 2011.

10. On or about March 11, 2011, CRG staff received Respondent's undated response to the Rule 8210 requests (postmarked March 9, 2011). As a result, the staff concluded the Rule 9552 proceeding against Respondent.

11. Respondent's failure to timely respond to the Rule 8210 requests impeded the staff's investigation.

12. By failing to timely respond to the Rule 8210 requests, Respondent violated FINRA Rules 8210 and 2010.

**SECOND CAUSE OF ACTION**  
**Failure to Respond to Rule 8210 Requests**  
**for Information and Documents**  
**(Violation of FINRA Rules 8210 and 2010)**

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

14. Based on information provided by Respondent in his undated response to the first set of Rule 8210 letters, FINRA's Los Angeles Member Regulation staff issued two additional letters to Respondent as part of its investigation of the allegations concerning Respondent.

15. On or about May 17, 2011, the staff issued the first Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD address and to the address contained in Respondent's response to CRG staff:

████████████████████████████████████████ The letter contained a response due date of June 2, 2011. The first class letter to both addresses was not returned. The certified mail receipt for the letter sent to the CRD address appears to bear the signature of "Elizabeth Mero." The certified mail letter to the Baldwin Park address was returned unclaimed. Respondent did not respond to the letter.

16. On or about June 7, 2011, the staff issued the second Rule 8210 request for information and documents to Respondent. The letter was sent by first class and certified mail to Respondent's CRD address and to the Baldwin Park address. The letter contained a response due date of June 21, 2011. The first class letter to both addresses was not returned. The certified mail receipt for the letter to the CRD address was returned with a delivery date of June 13, 2011, but unsigned. The certified mail receipt for the letter to the Baldwin Park address appears to bear the signature of "Elizabeth Mero." Respondent did not respond to the second letter.

17. Respondent's failure to respond to the Rule 8210 requests impeded the staff's investigation.

18. By failing to respond to the Rule 8210 requests, Respondent violated FINRA Rules 8210 and 2010.

**RELIEF REQUESTED**

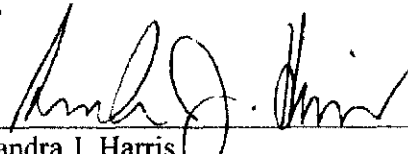
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a),  
including monetary sanctions, be imposed; and
- 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**

Date:

August 15, 2011

  
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