

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HAROLD WILSON
(CRD No. 4921047),

Respondent.

Disciplinary Proceeding
No. 2011026683601

Hearing Officer – RSH

DEFAULT DECISION

April 9, 2012

Respondent was barred from associating with any FINRA-regulated firm in any capacity for violating Rules 8210 and 2010 by failing to respond to requests for information. In light of the bar, no additional sanctions were imposed for the Respondent's private securities transactions in violation of Rules 3040 and 2010; however, he was ordered to pay restitution to two customers.

Appearances

Jonathan I. Golomb, Senior Special Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed a Complaint (attached to this Decision as Exhibit A) in this proceeding on December 9, 2011. The Complaint asserted two causes of action against Respondent Harold Wilson ("Respondent"): engaging in private securities transactions without notifying his member firm, in violation

of Rules 3040 and 2010; and failing to respond to FINRA's requests for information, in violation of FINRA Rules 8210 and 2010.¹

Respondent did not answer or otherwise respond to the Complaint. Consequently, on February 9, 2012, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Jonathan Golomb ("Golomb Decl."), and four exhibits ("CX"). Respondent did not reply to the motion.²

I. Respondent's Default

On December 9, 2011, Enforcement mailed the Complaint and First Notice of Complaint to Respondent's last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address") by certified mail. During the investigation, Rule 8210 requests sent to Wilson were returned after having been forwarded to an address in Georgia. Enforcement mailed an additional copy of the Complaint and First Notice of Complaint to the Georgia forwarding address ("Georgia Address"). The certified mailing to the CRD Address was returned unclaimed after three attempts at delivery. The certified mailing to the Georgia Address was returned after three attempts at delivery. The return receipt card had been detached. On January 24, 2012, the return receipt sent to the Georgia Address was returned bearing the signature of

¹ As of July 30, 2007, NASD began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. On December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and in some cases the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules and FINRA rules that were in effect at the time of the Respondent's alleged misconduct and cited in the Complaint as the basis for the charges against him.

² 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.

someone with the last name “Brown.” Respondent did not respond to the Complaint by January 6, 2012, the date specified in the Notice.³

On January 9, 2012, Enforcement mailed the Complaint and Second Notice of Complaint to Respondent’s CRD Address and the Georgia Address by certified mail. The Second Notice of Complaint sent to the CRD Address was forwarded to the Georgia Address and has not been claimed. The Second Notice of Complaint that Enforcement sent to the Georgia Address has not been claimed. Respondent did not respond to the Complaint by January 26, 2012, the date specified in the Notice.⁴ To date, Respondent has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.

By failing to answer the Complaint, Respondent defaulted. Accordingly, pursuant to 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.

II. Jurisdiction

Respondent first became registered with a FINRA-regulated firm in April 2005. He was employed as a General Securities Representative with Ameritas Investment Corp. (“Ameritas”), a FINRA-regulated firm, from September 1, 2007 through March 3, 2011. He has not been associated with a FINRA-regulated firm since then.⁵

Although Respondent has not been registered with FINRA since March 3, 2011, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to

³ Golomb Decl., ¶¶ 5-8; CX-2-3.

⁴ Golomb Decl., ¶¶ 9-10.

⁵ Golomb Decl., ¶ 2; CX-1.

Article V, Section 4 of FINRA's Bylaws, 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 misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period after the date upon which he ceased to be registered with a FINRA member.⁶

III. Violations

A. Selling Away

In the First Cause of Action of its Complaint, Enforcement alleged that in 2009 and 2010, while registered with Ameritas, Respondent engaged in private securities transactions with two couples without notifying his firm in advance. Respondent persuaded the customers to loan him money as part of a plan to invest in gold coins.

Mr. and Mrs. B

On or about December 9, 2009, Respondent persuaded Mr. and Mrs. B, Ameritas customers to whom Respondent had sold insurance products, to loan him \$10,000 for one month, promising a 10% monthly return. Respondent told Mr. B that he would receive repayment from profits Respondent would obtain by engaging in transactions involving imported gold. As security for the investment, Respondent gave Mr. B a post-dated personal check for \$11,000 dated January 11, 2010. Mr. and Mrs. B attempted to obtain payment from Respondent in January 2010. Respondent promised to pay them \$12,000 in February 2010 but failed to do so. In March 2010, Mr. and Mrs. B attempted to

⁶ Article V, Sec. 4, FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

deposit Respondent's \$11,000 check, but learned that Respondent's checking account had been closed. Respondent has not repaid Mr. and Mrs. B.⁷

Respondent did not disclose his transaction with Mr. and Mrs. B to Ameritas prior to his participation in the transactions.

Mr. and Mrs. C

Mr. and Mrs. C met the Respondent when he rented space in a storage facility they ran. Mr. and Mrs. C arranged to meet with Respondent to discuss purchasing life insurance; however, Respondent instead convinced them to loan him money as part of his plan to invest in gold coins. Respondent told Mr. and Mrs. C that he would use their money to buy a gold coin, mark up its price and resell it at a profit to another client. Mr. and Mrs. C did not expect to take possession or ownership of the coin. Respondent told Mr. and Mrs. C that he arranges gold coin investments for 70 other clients. Mr. and Mrs. C gave Respondent \$2,120 in cash on December 10, 2010. Respondent promised to repay Mr. and Mrs. C plus an additional \$600 in six days, which represented a 28% profit in six days or an annualized return of more than 1700%. In January and early February, Mr. and Mrs. C made repeated attempts to contact Respondent but were unable to contact him. They finally located Respondent after calling Ameritas. On March 16, 2011, Respondent repaid Mr. and Mrs. C their original investment without interest or profits.

Respondent did not disclose his transactions with Mr. and Mrs. C to Ameritas prior to his participation in the transactions.⁸

Rule 3040(a) provides that "[n]o person associated with a member shall participate in any manner in a private securities transaction except in accordance with the

⁷ Compl., ¶¶ 5-10.

⁸ Compl., ¶¶ 11-17.

requirements of this Rule.” Rule 3040 defines a “private securities transaction” as “any securities transaction outside the regular course or scope of an associated person’s employment with a member...”

The definition of security includes, *inter alia*, “investment contracts.”⁹ The Supreme Court has defined an investment contract as “a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.”¹⁰

One court, in a leading case on the issue of what constitutes an investment contract, specifically held that a program in which individuals purchased gold coins not as collectors, but with the expectation of selling them for a profit, usually with the assistance of the promoter, was an investment contract. In that case, unlike here, the investors had the option of reselling the coin themselves.¹¹

In this case, the Complaint alleges that the Respondent led the customers to believe that they would receive profits from investing in his “program” of gold trading, which involved approximately 70 other customers. They relied entirely on the Respondent’s efforts to generate profits in order to receive the promised “interest” of more than 100% per year. Thus, the Respondent appears to have been selling investment contracts, and thus securities.

Rule 3040(b) requires an associated person to notify his firm prior to participating in a private securities transaction. Rule 3040 protects investors from unsupervised sales and protects the member firm from liability and loss resulting from those sales. Violation

⁹ Securities Act of 1933, §2(a)(1); Securities Exchange Act of 1934.

¹⁰ *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

¹¹ *SEC v. Brigadoon Scotch Distributors, Ltd.*, 388 F.Supp. 1288 (S.D.N.Y. 1975).

of this rule deprives investors of a member firm's oversight and due diligence, protections they have a right to expect.¹²

Enforcement's allegations, which are deemed admitted, are sufficient to establish, for purposes of this Default Decision, that Respondent participated in private securities transactions without notifying his member firm, in violation of Rule 3040. A violation of Rule 3040 also constitutes a violation of Rule 2110.¹³

B. Failure to Respond to Requests for Information

In its Second Cause of Action, Enforcement alleged that Respondent violated Rules 8210 and 2010 by failing to provide information as requested by FINRA.

In a letter dated August 30, 2011, FINRA staff requested, pursuant to Rule 8210, that Respondent provide information concerning allegations that he sold securities away from Ameritas. FINRA sent the letter by first-class mail and certified mail to Respondent at his CRD address. The certified mail was forwarded to the Georgia Address and was returned unclaimed to Enforcement on or about September 28, 2011. The first-class mailing was not returned. After Respondent failed to respond, FINRA sent a second letter, dated September 20, 2011, requesting the same information. The September 20 letter was sent to Respondent at his CRD Address by first-class and certified mail. The certified mailing was forwarded to the Georgia Address and returned unclaimed to Enforcement on or about October 21, 2011. The first-class mailing was not returned. On October 25, 2011, FINRA sent copies of the first and second FINRA Rule 8210 requests

¹² *Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *14-15 (Nov. 8, 2006).

¹³ *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (July 20, 1999); *see also Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *11-12 (Nov. 8, 2007) (stating that violations of FINRA rules are inconsistent with just and equitable principles of trade and constitute a violation of Rule 2110).

by email to Respondent's email address. To date, Respondent has failed to respond in any way to FINRA's requests for information.¹⁴

The facts alleged in the Complaint establish that, for purposes of this Default Decision, Respondent failed to provide information requested by FINRA, and thereby violated Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.¹⁵

IV. Sanctions

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.¹⁶ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.¹⁷ For these reasons, FINRA Sanction Guidelines ("Guidelines") recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.¹⁸ Here, Respondent failed to respond in any manner to three requests for written information. There is no evidence of any mitigating facts that would justify a sanction of less than a bar.

Accordingly, the Hearing Officer finds that Respondent should be barred from associating with any FINRA-regulated firm in any capacity for violating Rules 8210 and 2010. In light of the bar, no additional sanctions are imposed for engaging in private

¹⁴ Complaint, ¶¶ 22-29.

¹⁵ *Department of Enforcement v. Hoepfer*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001).

¹⁶ *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000); *Department of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003).

¹⁷ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁸ *FINRA Sanction Guidelines* at 33 (2011) www.finra.org/sanctionguidelines.

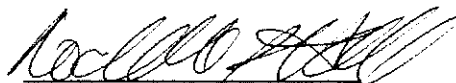
securities transactions in violation of Rules 3040 and 2010; however Wilson is ordered to pay restitution in the amount of \$10,000 plus interest to Mr. and Mrs. B.

V. Order

For failing to respond to requests for information, in violation of Rules 8210 and 2010, Harold Wilson is barred from associating with any FINRA-regulated firm in any capacity. In light of the bar, no additional sanctions are imposed for engaging in private securities transactions in violation of Rules 3040 and 2010. Wilson is ordered to pay to Mr. and Mrs. B \$10,000 together with interest on the unpaid balance, calculated at the rate established under Section 6621(a)(2) of the Internal Revenue Code, until paid in full.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to:

Harold Wilson (via first-class mail and overnight courier)
Jonathan I. Golomb Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HAROLD WILSON (CRD No. 4921047),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011026683601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In 2009 and 2010, Respondent Harold Wilson engaged in private securities transactions with two couples without making required disclosures to his employing broker-dealer, as required under NASD Rule 3040. In addition, he failed to respond to two FINRA Rule 8210 requests. By virtue of this conduct, Wilson violated NASD Rule 3040, and FINRA Rules 2010 and 8210.

RESPONDENT AND JURISDICTION

2. Harold Wilson (CRD 4921047) entered the securities industry 2005. He has been affiliated with five insurance companies since that time, and has been registered with three broker-dealers, including Ameritas Investment Corp. (September 2007 – March 2011). He was licensed as an insurance products representative at the first two firms, and also became registered as a general securities representative with Ameritas. He was fired by Ameritas on March 3, 2011 in connection with the undisclosed outside activities discussed below, and for failing to respond to his firm's request for information about those transactions.

3. Although Respondent 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 Respondent's registration with Ameritas Investment Corp., namely, March 3, 2011, and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member, and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered with a FINRA member.

FIRST CAUSE OF ACTION

Selling Away (NASD Rule 3040 and FINRA Rule 2010)

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

Mr. and Mrs. B

5. On or about December 9, 2009, Wilson induced a couple to whom he had sold insurance products, Mr. and Mrs. B, to participate in an investment which he promised would generate 10% per month to them.

6. Mr. and Mrs. B agreed to loan Wilson \$10,000 for one month. As security for the investment, Wilson gave Mr. B a post-dated personal check for \$11,000 dated January 11, 2010.

7. Mr. and Mrs. B attempted to obtain payment from Wilson in January 2010. Wilson promised to pay them \$12,000 in February, but failed to do so.

8. In March 2010, Mr. and Mrs. B attempted to deposit the \$11,000 check given to them by Wilson, but learned that Wilson's checking account had been closed.

9. Wilson told Mr. B that he would be able to pay him through profits Wilson would obtain by engaging in transactions involving imported gold.

10. Wilson has not repaid Mr. and Mrs. B.

Mr. and Mrs. C

11. Mr. and Mrs. C first met Wilson when he rented space in a storage facility they ran.

12. Mr. and Mrs. C arranged to meet with Wilson to discuss purchasing life insurance.

However, Wilson convinced them to loan him money as part of a plan to invest in gold coins.

Wilson told them that he would use their money to buy a gold coin, mark up its price, and resell it at a profit to another client of his. Mr. and Mrs. C did not expect to take possession or ownership of the coin.

13. Wilson told Mr. and Mrs. C that he arranges gold coin investments for approximately seventy other clients.

14. Wilson asked Mr. and Mrs. C to provide him with \$2,120 in cash, and promised to repay their initial investment plus an additional \$600 in six days. This represented a 28% profit in six days, or an annualized return of more than 1700%.

15. Mr. and Mrs. C gave Wilson \$2,120 in cash on December 10, 2010.

16. Mr. and Mrs. C made repeated attempts over the next few months to contact Wilson by telephone and email, but were unable to reach him until after they contacted Ameritas in late February 2011 in attempt to locate Wilson.

17. On March 16, 2011, Wilson repaid Mr. and Mrs. C their original \$2,120, without interest or profits.

Failure to Notify Ameritas

18. The investments that Mr. and Mrs. B and Mr. and Mrs. C participated in through Wilson were investment contracts. Therefore, by inducing the customers to participate in these

investments outside of the regular course or scope of his employment with Ameritas, Wilson engaged in private securities transactions, as defined in NASD Rule 3040(e)(1).

19. Wilson did not disclose his participation in these private securities transactions to Ameritas prior to his participation in them, as required by NASD Rule 3040(b).

20. By engaging in the foregoing course of conduct, Wilson violated NASD Rule 3040. By so doing, he also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failure to Respond to Rule 8210 Requests (FINRA Rules 8210 and 2010)

21. The Department realleges and incorporates by reference paragraphs 1– 20 above.

22. On August 30, 2011, the Department of Enforcement sent a FINRA Rule 8210 request to Wilson by certified mail and regular mail, addressed to his home address in Reseda, California, as listed in CRD. That letter required him to produce information by September 12, 2011.

23. The certified mailing was forwarded to another address, in Marble Hill, Georgia, and returned unclaimed to Enforcement on or about September 29, 2011.

24. The regular mailing was not returned to Enforcement.

25. On September 20, 2011, the Department of Enforcement sent a second notice of FINRA Rule 8210 request to Wilson by certified mail and regular mail, addressed to his CRD address California. That letter required him to produce information by October 3, 2011.

26. The certified mailing was forwarded to another address, in Marble Hill, Georgia, and returned unclaimed to Enforcement on or about October 21, 2011.

27. The regular mailing was not returned to Enforcement.

28. On October 25, 2011, the Department of Enforcement sent copies of the first and second FINRA Rule 8210 requests by email to Wilson's last known email address.

29. As of the date of this Complaint, Wilson has not produced the requested documents or responded in any way to the FINRA Rule 8210 requests.

30. By virtue of the foregoing course of conduct, Wilson violated FINRA Rule 8210. By so doing, he also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

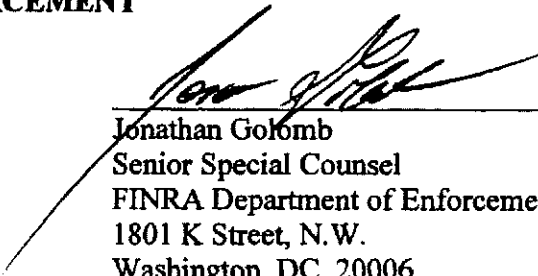
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed; and
- C. order that 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: December 9, 2011



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