

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ARDELLA R. CLAY-JOHNSTON,  
(CRD No. 5901800),

Respondent.

Disciplinary Proceeding  
No. 2011027554601

Hearing Officer – RLP

**DEFAULT DECISION**

March 11, 2013

**Respondent is barred from associating with any FINRA member in any capacity for: (i) willfully failing to disclose her criminal history, in violation of FINRA By-Laws, Article V, Section 2, and FINRA Rules 1122 and 2010; and (ii) failing to provide requested information, in violation of FINRA Rules 8210 and 2010.**

**Appearances**

John S. Han, Esq., and Jacqueline D. Whelan, Esq., San Francisco, CA, for the Department of Enforcement.

No appearance by or for Respondent.

**DECISION**

**I. Introduction**

FINRA investigators began the inquiry that led to the filing of a complaint against Ardella R. Clay-Johnston after BBVA Compass Investment Solutions, Inc. (“Compass”), a FINRA member, filed an Uniform Termination Notice for Securities Industry Registration (Form U5) for Clay-Johnston. The Form U5 explained that the reason for Clay-Johnston’s termination was “supporting documentation for DRP review not obtainable timely.”<sup>1</sup> Based on evidence

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<sup>1</sup> “DRP” is the acronym for the Disclosure Reporting Pages included in disclosure forms, such as the Form U4.

obtained in the course of the investigation, the FINRA Department of Enforcement initiated this proceeding on December 11, 2012.

Enforcement charged, in its first cause of action, that Clay-Johnston willfully failed to disclose her criminal background on a Uniform Application for Securities Industry Registration (Form U4), in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010. In its second cause of action, Enforcement charged Clay-Johnston with failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010. Clay-Johnston did not answer or otherwise respond to the complaint. Consequently, on February 19, 2013, Enforcement filed a motion for entry of a default decision, together with the Declaration of John Han and ten exhibits. Clay-Johnston did not respond to the motion.

For the reasons set forth below, the Hearing Officer concludes that FINRA has jurisdiction over this disciplinary proceeding and that Clay-Johnston has defaulted by failing to answer the complaint. The Hearing Officer further concludes that the facts set out in the complaint and materials supporting Enforcement's motion adequately establish the violations as charged in the complaint and that it is appropriate to impose the sanction of a bar for one of the violations.<sup>2</sup>

## **II. Jurisdiction**

Clay-Johnston became associated with Compass in February 2011 by completing a Uniform Application for Securities Industry Registration (Form U4).<sup>3</sup> She was terminated by the

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<sup>2</sup> Given that Clay-Johnston is in default as detailed below, the factual determinations in this decision are based on allegations in the attached complaint, which are deemed admitted, as well as on the Han Declaration ("Han Decl.") and attached exhibits.

<sup>3</sup> See FINRA By-Laws, Article I (defining "person associated with a member" or "associated person of a member" to include a natural person who is registered or has applied for registration with FINRA).

firm on April 5, 2011, and since then has not been associated with or registered through a FINRA member firm.<sup>4</sup>

Although Clay-Johnston is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the complaint: (i) was filed within two years from the date upon which she ceased to be associated with Compass; and (ii) charges her with misconduct that occurred while she was associated with Compass, and with failing to respond to information requests made during the two-year period following the cessation of her association with Compass.<sup>5</sup>

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

On December 11, 2012, Enforcement sent a notice of complaint and the complaint to Clay-Johnston by, among other means, certified mail addressed to her residential address as recorded in the Central Registration Depository ("CRD address"). Concerns about a misplaced receipt for the certified mailing prompted Enforcement to re-serve the complaint and the notice on December 13, 2012, by, among other means, certified mail addressed to Clay-Johnston's CRD address. She did not respond. Accordingly, on January 11, 2013, Enforcement served a second notice of complaint and the complaint by certified mail addressed to Clay-Johnston's CRD address. Although Clay-Johnston signed the return receipt for this mailing, she did not answer the complaint by the January 28, 2013 deadline specified in the second notice and to date has not filed an answer or otherwise responded to the complaint.<sup>6</sup>

The Hearing Officer concludes that Clay-Johnston had actual notice of this proceeding and, hence, that she defaulted by failing to answer the complaint.

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<sup>4</sup> Complaint ¶¶ 2-3; Han Decl. ¶ 5; CX-1, CX-2, at 1.

<sup>5</sup> See Article V, Sec. 4(a), FINRA By-Laws, available at [www.finra.org/Industry/Regulation/FINRARules/](http://www.finra.org/Industry/Regulation/FINRARules/) (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

<sup>6</sup> Han Decl. ¶¶ 6-15; CX-3 – CX-9.

#### **IV. Findings of Fact and Conclusions of Law**

##### **A. Willful Failure to Disclose Information on Form U4**

**Findings of Fact.** On February 3, 2011, Clay-Johnston completed and signed a Form U4 to apply for registration as an Investment Company and Variable Contracts Products Representative. In so doing, Clay-Johnston answered “No” to question 14B(1)(b), which asked if she had ever been charged with a “misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.”<sup>7</sup> Clay-Johnston’s answer was false however, because, on December 16, 1999, she was charged in Los Angeles County Superior Court with a misdemeanor under California Welfare and Institutions Code §10980(c), providing, at the pertinent time, criminal sanctions for obtaining welfare benefits “by means of false statement or representation, or by impersonation or other fraudulent device . . . .”<sup>8</sup>

Clay-Johnston submitted the Form U4 to Compass, which filed it with FINRA on March 15, 2011. Around three weeks later, Clay-Johnston’s association with Compass was terminated, as stated above.

**Conclusions of Law.** Article V, Section 2 of FINRA’s By-Laws requires that associated persons applying for registration provide FINRA with “such . . . reasonable information with respect to the applicant as [FINRA] may require” and further that “[e]very application for registration . . . shall be kept current at all times . . . .” FINRA Rule 1122, in turn, prohibits associated persons from filing registration information that is incomplete or inaccurate so as to be misleading. These provisions give rise to a requirement that applicants for registration

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<sup>7</sup> Complaint ¶¶ 5-6; CX-1, at 7.

<sup>8</sup> Cal. Welf. & Inst. Code § 10980, subd. (c); Complaint ¶ 7.

provide accurate information so that regulators, employers, and members of the public “have all material, current information about the securities professional with whom they are dealing.”<sup>9</sup> It follows, therefore, that filing a false or incomplete Form U4 violates Article V, Section 2 of FINRA’s By-Laws and FINRA Rule 1122.<sup>10</sup> Failing to accurately and fully disclose information on a Form U4 also runs afoul of the high standards of commercial honor and just and equitable principles of trade that FINRA members and their associated persons must observe under Rule 2010.<sup>11</sup>

As stated, Clay-Johnston was charged with misdemeanor welfare fraud in 1999. Accordingly, when Clay-Johnston answered “No” to question 14B(1)(b) inquiring about whether she had ever been charged with a misdemeanor involving, among other things, fraud or false statements, she answered inaccurately. Because the “violation of providing false information to [FINRA] requires only that the complainant prove that the information was false,”<sup>12</sup> the Hearing Officer finds that Clay-Johnston violated Article V, Section 2 of FINRA’s By-Laws and Rules 1122 and 2010.

Based on the foregoing, the Hearing Officer also concludes that, under FINRA By-Laws Article III, Section 3(b), Clay-Johnston is ineligible to be associated with a FINRA member,

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<sup>9</sup> *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at \*17-18 (Oct. 20, 2011); *Dep’t of Enforcement v. Fishman*, No. 2007008812801, 2008 FINRA Discip. LEXIS 53, at \*10 (OHO Sept. 18, 2008) (stating that Article V, Section 2(c) of the FINRA By-Laws and the predecessors to FINRA Rules 1122 and 2010 “require associated persons to answer the questions of the Form U4 accurately and fully and to keep the information updated.”); *see also Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at \*26 (Nov. 9, 2012).

<sup>10</sup> *Dep’t of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at \*38-40 (NAC May 1, 2012).

<sup>11</sup> *Id.* (citing *Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at \*8 (Dec. 22, 2008)); *see Robert E. Kauffman*, 51 SEC 838, 840 (1993), *aff’d*, *Robert E. Kauffman v. SEC*, 40 F.3d 1240 (3rd Cir. 1994) (table).

<sup>12</sup> *Dep’t of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at \*12 (NAC May 3, 2005) (quoting *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at \*8 (NAC Apr. 27, 2004) (internal quotation omitted)).

because she is subject to a disqualification set forth in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(39).<sup>13</sup> Under Section 3(a)(39)(F), a person who “willfully” fails to disclose any “material” fact which is required to be stated in an application is subject to statutory disqualification from participating in the securities industry. Here, the information that Clay-Johnston failed to timely disclose is material. “The test of materiality is whether the omitted information would have ‘significantly altered the total mix of information made available.’”<sup>14</sup> Criminal information is material.<sup>15</sup>

The failure to timely disclose also was willful. A respondent acts “willfully” when he intentionally commits the act that constitutes the violation; he need not act with a culpable state of mind or even be aware that he is violating any regulatory requirement.<sup>16</sup> Clay-Johnston knew she had been charged with a misdemeanor. Accordingly, the Hearing Officer concludes that she intentionally failed to fill out the Form U4 accurately to reflect her criminal charge and, therefore, that she acted willfully.<sup>17</sup>

#### **B. Failure to Respond to Requests for Information**

**Findings of Fact.** On July 24, 2012, FINRA staff sent Clay-Johnston a request, pursuant to FINRA Rule 8210, for information concerning her failure to disclose a misdemeanor charge on her Form U4. The request was sent via first-class mail to Clay-Johnston’s CRD address.

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<sup>13</sup> Article III, Section 3(b) of FINRA’s By-Laws provides that “No person shall become associated with a member, continue to be associated with a member, or transfer association to another member, if such person . . . is or becomes subject to a disqualification under Section 4.” Article III, Section 4 provides that a person “is subject to a ‘disqualification’ with respect to membership, or association with a member, if such person is subject to any ‘statutory disqualification’ as such term is defined in Section 3(a)(39) of the [Exchange] Act.”

<sup>14</sup> *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at \*29 (Dec. 7, 2009) (citation omitted), *pet. denied*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

<sup>15</sup> *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at \*15 n.5 (NAC Dec. 18, 2009).

<sup>16</sup> See, e.g., *Mathis v. SEC*, 671 F.3d 210, 216-219 (2d Cir. 2012); *Dep’t of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at \*13 n.11 (NAC Aug. 19, 2010).

<sup>17</sup> See *Mathis*, 671 F.3d at 218.

Although the staff requested that Clay-Johnston supply the information no later than August 8, 2012, she failed to do so.<sup>18</sup>

Accordingly, on August 24, 2012, FINRA staff sent Clay-Johnston a second request, pursuant to FINRA Rule 8210, for the information previously requested. The second request also was mailed to Clay-Johnston's CRD address. After Clay-Johnston received this request, she called FINRA staff and, during the course of the conversation, stated that she intended to provide the requested information. However, she did not do so by the date specified in the request—September 7, 2012—and, to date, she has not provided the requested information.<sup>19</sup>

**Conclusions of Law.** FINRA Rule 8210(c) sets forth an unequivocal requirement that registered persons comply with FINRA information requests, providing that “[n]o member or person shall fail to provide information” requested pursuant to the Rule. The foregoing facts establish that Clay-Johnston completely failed to provide requested information. Accordingly, the Hearing Officer finds that Clay-Johnston violated Rule 8210 and, furthermore, that her violation of Rule 8210 is also a violation of Rule 2010.<sup>20</sup>

## **V. Sanctions**

### **A. Willful Failure to Disclose Information on Form U4**

As FINRA's National Adjudicatory Council has emphasized, the questions on a Form U4 are a “critical means of providing FINRA with the information needed to protect investors” because FINRA uses the form to determine the fitness of applicants to participate in the securities industry.<sup>21</sup> As a consequence, FINRA's Sanction Guidelines recommend a fine of up

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<sup>18</sup> Complaint ¶¶ 11-12.

<sup>19</sup> Complaint ¶¶ 13-15; Han Decl. ¶¶ 22-26.

<sup>20</sup> See *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at \*13-14 & n.14 (Apr. 1, 2005) (efforts to impede FINRA investigations violate Rule 2010's high ethical standards).

<sup>21</sup> *Zayed*, 2010 FINRA Discip. LEXIS 13, at \*10 & n.8 (citing *Thomas R. Alton*, 52 SEC 380, 382 (1995)).

to \$50,000 and a suspension of up to 30 business days for an individual's filing of a false, misleading, or inaccurate Form U4. In egregious cases, such as those involving repeated false filings, the Guidelines recommend a suspension in any or all capacities (of up to two years) or a bar.<sup>22</sup> Among the principal considerations in determining sanctions is the nature and significance of the information at issue.

In this case, the nature and significance of the information at issue calls for a substantial sanction—one that will impress on Clay-Johnston the importance of full disclosure of information clearly bearing on her fitness to participate in the securities industry. Clay-Johnston was charged with a crime tantamount to theft and, as the Securities and Exchange Commission has noted, “[t]here can hardly be more serious misconduct in the securities business . . . .”<sup>23</sup> Accordingly, the Hearing Officer concludes that the sanction recommended by Enforcement, a nine-month suspension in all capacities and a \$10,000 fine would be appropriate to remediate this misconduct. In light of the bar that will be imposed for Clay-Johnston's Rule 8210 violation, however, the Hearing Officer has determined not to impose additional sanctions for this violation.<sup>24</sup>

#### **B. Failure to Respond to Requests for Information**

A violation of Rule 8210 is serious because Rule 8210 “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”<sup>25</sup> The rule thus “is at the heart of the self-regulatory system for the securities industry” and, when members delay their responses or neglect entirely their responsibilities

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<sup>22</sup> *FINRA Sanction Guidelines* 69-70 (2011), available at [www.finra.org/Industry/Enforcement/SanctionGuidelines](http://www.finra.org/Industry/Enforcement/SanctionGuidelines).

<sup>23</sup> *Brian G. Allen*, 50 SEC 509, 510 (1991).

<sup>24</sup> *Sanction Guidelines* 10 (“In all cases, Adjudicators may exercise their discretion and, if a bar is imposed, refrain from imposing a fine . . .”).

<sup>25</sup> *Richard J. Rouse*, 51 SEC 581, 584, 1993 SEC LEXIS 1831, at \*7 (1993).

under the rule, they “undermine the ability of [FINRA] to . . . protect the public interest.”<sup>26</sup> For these reasons, the Guidelines recommend a bar when an individual does not respond in any manner.<sup>27</sup> Clay-Johnston was given two opportunities to comply with FINRA’s request that she provide information concerning the misdemeanor charge and twice she failed to provide any such information. Indeed, even after Clay-Johnston contacted FIRA staff and stated that she intended to provide the requested information, she failed to do so. This blatant disregard of her regulatory obligations demonstrates that, if Clay-Johnston were to remain in the securities industry, she would pose a significant risk to customers, employers, and others. Because there is no evidence of any mitigating facts that would justify a sanction less than a bar, the Hearing Officer finds that Clay-Johnston should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

## **VI. Order**

Respondent Ardella R. Clay-Johnston is barred from associating with any FINRA member in any capacity for failing to provide requested information, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this decision becomes FINRA’s final disciplinary action. In light of the bar, no further sanctions are assessed for Respondent’s willful failure to disclose reportable criminal charges on a Form U4, in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.



Rada Lynn Potts  
Hearing Officer

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<sup>26</sup> *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at \*13 (Nov. 14, 2008), *pet. denied*, 347 F. App’x 692 (2d Cir. 2009).

<sup>27</sup> *Sanction Guidelines* 33.

Copies to:

Ardella R. Clay-Johnston (via overnight courier and first-class mail)

John S. Han (via email and first-class mail)

Jacqueline D. Whelan (via email)

Mark P. Dauer, Esq. (via email)

David R. Sonnenberg, Esq. (via email)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Ardella R. Clay-Johnston

(CRD No. 5901800),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2011027554601

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Respondent Ardella R. Clay-Johnston willfully failed to disclose a relevant misdemeanor charge on a Uniform Application for Securities Industry Registration or Transfer (Form U4). She further failed to provide information requested by FINRA staff in connection with an investigation pertaining to the aforementioned non-disclosure.

**RESPONDENT AND JURISDICTION**

2. Clay-Johnston entered the securities industry on or about March 15, 2011 by filing a Form U4 to become registered at FINRA member BBVA Compass Investment Solutions, Inc (the Firm). She was terminated by the Firm on or about April 5, 2011 and has not since become registered at or associated with any other FINRA members.
3. Although Clay-Johnston is no longer registered or associated with a FINRA member firm, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because:

- a. the Complaint was filed within two years after the date upon which she ceased to be associated with a FINRA member, namely, April 5, 2011; and
- b. the Complaint charges Clay-Johnston with misconduct committed while she was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which she ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION

Filing of Inaccurate Information with Respect to Registration (FINRA By-Laws, Article V, Section 2 and FINRA Rules 1122 and 2010)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. On or about February 3, 2011, Clay-Johnston completed and signed a Form U4 to apply for registration as an Investment Company and Variable Contracts Products Representative at the Firm.
6. On the Form U4, Clay-Johnston answered "No" to question 14B(1)(b), which asked if she had ever been charged with a misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
7. Clay-Johnston's answer was false because, on or about December 16, 1999, she was charged in Los Angeles County Superior Court with a misdemeanor involving fraud, false statements and wrongful taking of property, to wit, California Welfare and Institutions Code Section 10980(c).
8. She subsequently submitted the signed Form U4 to the Firm, which ultimately filed it with FINRA on or about March 15, 2011.

9. By willfully failing to disclose a relevant misdemeanor charge on her Form U4, Clay-Johnston violated Article V, Section 2 of the FINRA By-Laws and FINRA Rules 1122 and 2010.

SECOND CAUSE OF ACTION

Failure to Provide Information to FINRA (FINRA Rules 8210 and 2010)

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.
11. On or about July 24, 2012, FINRA staff sent Clay-Johnston a request, pursuant to FINRA Rule 8210, for information concerning her failure to disclose a misdemeanor charge on her Form U4 (First Request). The First Request was sent via first class mail to Clay-Johnston's last known residential address as reflected in the Central Registration Depository (CRD Address).
12. Although the due date for the First Request was August 8, 2012, Clay-Johnston failed to provide the requested information.
13. On or about August 24, 2012, FINRA staff sent Clay-Johnston a second request, pursuant to FINRA Rule 8210, for the information originally requested on July 24, 2012 (Second Request). The second request was sent via first and certified mail to the CRD Address.
14. On or about August 27, 2012, Clay-Johnston contacted FINRA staff by telephone and stated that she intended to provide the information requested by the staff.
15. Although the due date for the Second Request was September 7, 2012, Clay-Johnston failed to provide the requested information.
16. By failing to provide FINRA staff with information requested in connection with an investigation, Clay-Johnston violated FINRA Rules 8210 and 2010.

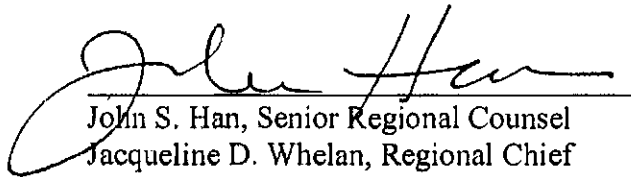
## RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Clay-Johnston 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;
- C. order that Clay-Johnston bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Clay-Johnston's conduct, as alleged in the First Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

## FINRA DEPARTMENT OF ENFORCEMENT

Date: December 11, 2012

  
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