

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDRES ROJAS,
(CRD No. 4799671),

Respondent.

Disciplinary Proceeding
No. 2011027886901

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

December 4, 2013

Respondent is barred for participating in the impersonation of a customer and making a false statement to a FINRA member firm in connection with the impersonation in violation of FINRA Conduct Rule 2010 and for failing to provide testimony in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

For the Department of Enforcement, Complainant: Christopher Perrin, Esq., and Michael J. Rogal, Esq.

For Andres Rojas, Respondent: no appearance.

DECISION

Andres Rojas was formerly registered with FINRA as a General Securities Representative at Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or the "Firm") from September 2006 through May 2011. Rojas was terminated by Merrill Lynch for "conduct including diverting a client's account statements." He is not currently associated with a FINRA member.

After receiving a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Merrill Lynch on Rojas's behalf, FINRA staff began an investigation into

Rojas's activities. As a result of that investigation, Enforcement filed a Complaint with the Office of Hearing Officers, charging Rojas with participating in the impersonation of a customer (First Cause of Action) and making a false statement to the Firm in an e-mail in connection with the impersonation (Second Cause of Action). Enforcement alleged that this conduct violated FINRA Conduct Rule 2010, which requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade. Additionally, Enforcement charged Rojas with failing to appear for an on-the-record interview during the investigation, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 (Third Cause of Action). 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.

Rojas 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 a Declaration and Supplemental Declaration of Michael Rogal¹ and nine exhibits.²

For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars Rojas from association with a FINRA member firm in any capacity based on his violations of FINRA Conduct Rule 2010 (First and Second Causes of Action) and of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 (Third Cause of Action).

¹ Hereinafter referred to as "Decl." and "Suppl. Decl.," respectively.

² Hereinafter referred to as "CX-__".

I. Jurisdiction

Rojas is not currently registered with a FINRA member firm. However, 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 Rojas's last registration with FINRA terminated,⁴ and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to requests for information that FINRA staff issued during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

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

Enforcement filed the attached Complaint with the Office of Hearing Officers on May 20, 2013. On that day, Enforcement served Rojas with a Notice of Complaint and Complaint by U.S. Postal Service ("USPS") first-class certified mail at his last known residential address as reflected in the Central Registration Depository ("CRD Address")⁵ and at a "possible alternative residential address" in Coral Gables, Florida ("Coral Gables Address").⁶

Rojas did not file an Answer to the Complaint by June 17, 2013, the date specified in the Notice of Complaint. Accordingly, on June 24, 2013, Enforcement served Rojas with a Second Notice of Complaint and Complaint by USPS first-class certified mail to the CRD Address and

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 May 20, 2013. FINRA terminated Rojas's last registration on May 24, 2011. CX-1, at 3.

⁵ Decl. ¶ 6; CX-2.

⁶ Decl. ¶ 6. The staff became aware of the Coral Gables Address from a USPS expired forwarding service notice dated August 18, 2012. Decl. ¶ 6; CX-3. Enforcement does not have actual knowledge that the CRD Address is out of date, however, and does not have actual knowledge of another address at which Rojas receives mail. Decl. ¶ 8. Additionally, the Notice of Complaint and Complaint and were also sent to Rojas's counsel via USPS first-class certified mail, but the record is silent regarding whether his counsel agreed to accept service of the Complaint pursuant to FINRA Rule 9131(a).

the Coral Gables Address.⁷ Rojas did not file an Answer to the Complaint by July 11, 2013, the deadline specified in the Second Notice of Complaint. Therefore, on August 23, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Rojas did not respond to the motion. To date, Rojas has not filed an Answer to the Complaint.

The Hearing Officer concludes that Rojas received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1),⁸ and he 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 treated the allegations in the attached Complaint as admitted pursuant to FINRA Rules 9215(f) and 9269(a).

A. Andres Rojas

Rojas began his career in the securities industry in April 2004.⁹ Over the course of that career, he was employed by three FINRA member firms.¹⁰ In September 2006, he became registered as a General Securities Representative with Merrill Lynch.¹¹ Rojas remained

⁷ Decl.¶ 7; CX-5. The Second Notice of Complaint and Complaint were also served on Rojas's counsel by USPS first-class certified mail. The record is silent as to whether counsel agreed to accept service of the Complaint pursuant to FINRA Rule 9131(a).

⁸ This finding is based on the service upon the CRD Address. The record is silent as to whether Rojas's counsel agreed to accept service of the Complaint pursuant to Rule 9131(a), *see supra* notes 6–7. Accordingly, the Hearing Officer makes no finding as to whether Rojas received valid constructive service of this proceeding as a result of the service on his counsel of the Notices of Complaint and the Complaint.

⁹ CX-1, at 4.

¹⁰ *Id.* at 3–4.

¹¹ *Id.* at 3.

employed there until April 2011, when the Firm discharged him for “conduct including diverting a client’s account statements.”¹² Thereafter, he has not been registered with a FINRA member.¹³

B. Rojas Participated in the Impersonation of a Customer and Made a False Statement to the Firm

While employed at Merrill Lynch, Rojas worked as a sales associate to a senior broker, Giancarlo Ciocca,¹⁴ primarily servicing high net worth clients residing in Latin America.¹⁵ Customer GL, a Guatemalan citizen, opened an account at the Firm in February 2010 for a personal holding company, BDM. Ciocca was the broker on that account.¹⁶ In June 2010, the value of the holdings in the BDM account was approximately \$3 million.¹⁷

On July 8, 2010, Ciocca and Rojas contacted the Firm’s call center.¹⁸ After identifying himself as an employee of the Firm’s Miami office, Rojas told the call center employee that he wanted to help a customer enroll in online access.¹⁹ Further, he said that the customer, GL, was on hold on another phone line.²⁰ This statement was untrue. In fact, Ciocca was the person on

¹² CX-1, at 3, 10.

¹³ *Id.* at 3.

¹⁴ The Complaint refers to Ciocca as “GC.” On June 4, 2013, FINRA issued a Letter of Acceptance, Waiver and Consent (“AWC”) addressing Ciocca’s conduct relating to, among other things, the impersonation scheme that is the subject of the Complaint against Rojas. In the AWC, Ciocca consented to a bar from association with any member firm. Suppl. Decl. ¶¶ 4–5; CX-6.

¹⁵ Compl. ¶ 5.

¹⁶ *Id.* at ¶¶ 6, 9.

¹⁷ *Id.* at ¶ 6.

¹⁸ *Id.* at ¶ 7.

¹⁹ *Id.* at ¶ 8.

²⁰ *Id.*

hold.²¹ When the call center employee asked to speak with the customer, Rojas introduced Ciocca as the customer, GL.²² Ciocca then told the operator that he was GL.²³ Rojas remained on the phone while the call center employee asked Ciocca security questions about GL's place of birth and e-mail address.²⁴ Because he had access to that information as the broker for GL's BDM account, Ciocca was able to answer all these questions correctly.²⁵

During the telephone call, the call center employee provided Ciocca and Rojas with an account login and temporary password for GL's account.²⁶ This enabled Ciocca to then change the account preferences so that the Firm would no longer send hard-copy statements to customer GL. Ciocca also changed the e-mail address associated with the account to one controlled by Ciocca so that he, and not the customer, would receive electronic communications from the Firm relating to the account.²⁷

The impersonation of customer GL during the call was designed to prevent GL from detecting substantial losses in the BDM account caused by Ciocca's trading. Additionally, during his participation in the scheme, Rojas was aware that this was its purpose.²⁸ (Later, by April

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at ¶ 9.

²⁵ *Id.*

²⁶ *Id.* at ¶ 10.

²⁷ *Id.*

²⁸ Compl. ¶ 11; CX-7. On April 27, 2011, after the impersonation was discovered, Rojas sent an e-mail to Merrill Lynch compliance. In that e-mail, Rojas wrote, among other things, that he "asked [Ciocca] why he was hiding this information from the client and his answer was that the client . . . was not going to tolerate any losses in his account." Rojas further admitted his knowledge and complicity in the scheme by stating that in addition to the telephone call, "we also suppressed the account statements. Giancarlo [Ciocca] decided to choose a personal email address instead of the client in order for him to hide the account statements." [Emphasis added]. CX-7.

2011, the account's value fell to approximately \$629,000.)²⁹ GL did not authorize either Ciocca or Rojas to impersonate him or to obtain online access to his accounts.³⁰

Finally, in connection with the impersonation, Rojas submitted a false request to the Firm. During the above referenced telephone call, the call center employee asked Rojas to submit a request by e-mail confirming that the request for online access was being made by the customer.³¹ Rojas then e-mailed the call center employee, falsely stating that "the client requesting is [customer GL-BDM]."³² In fact, GL did not make the request.³³

C. Rojas Failed to Provide On-The-Record Testimony as Requested by FINRA Staff

In July 2011, Rojas's counsel submitted a letter on Rojas's behalf in response to a FINRA request for information.³⁴ By letters dated July 9 and August 15, 2012, Enforcement requested that Rojas appear for an on-the-record interview pursuant to Rule 8210.³⁵ Because Rojas's counsel had made an appearance on Rojas's behalf in FINRA's investigation, Enforcement staff sent these requests to Rojas's counsel.³⁶ The staff also sent the August 15, 2012, request to Rojas at his CRD Address.³⁷ On August 29, 2012, Rojas's counsel informed Enforcement staff that Rojas had indicated to him that he would not appear for any on-the-record interview as requested

²⁹ Compl. at ¶ 6.

³⁰ *Id.* at ¶ 11.

³¹ *Id.* at ¶ 12.

³² *Id.*; CX-8.

³³ Compl. ¶ 12.

³⁴ *Id.* at ¶ 13.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

at any time.³⁸ Rojas has never appeared for the on-the record interview requested by Enforcement staff.³⁹

IV. Conclusions of Law

A. Rojas Violated FINRA Rules 2010 by Participating in the Impersonation of a Customer to Obtain Online Access to the Customer's Account and By Making a False Statement to His Firm to Further the Impersonation Scheme

FINRA Rule 2010 requires FINRA members and their associated persons to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of their business. Impersonating a customer or participating in a customer impersonation scheme violates Rule 2010.⁴⁰ Providing false answers to compliance-related questions posed by a firm also violates Rule 2010.⁴¹ Rojas participated in an impersonation scheme with senior broker Ciocca. He did so knowing that its purpose was to allow Ciocca to obtain unauthorized online access to GL's account in order to hide account losses from the customer. As part of that scheme, Rojas falsely represented in an e-mail to the Firm that the customer was requesting online account access. Rojas's participation in the impersonation scheme, and his false statement to further the scheme, constituted separate and distinct violations of Rule 2010.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *Dep't of Enforcement v. Golonka*, No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *24-25 (NAC Mar. 4, 2013) (representative's participation in multiple telephone calls in which his associates impersonated customers in order to obtain confidential information held to violate FINRA Rule 2010 and noting that Golonka's impersonation scheme "was similar, at least for liability purposes, to an assortment of other misconduct that has been found to run afoul of NASD Rule 2110 [the predecessor of FINRA Rule 2010], such as circumventing customer consent requirements to transfer customer accounts, improperly obtaining and transferring an employer's confidential customer information, misrepresentations, and forgery.").

⁴¹ See, e.g., *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *48 (Feb. 10, 2012) ("an associated person's failure to provide accurate information to his or her member firm is especially problematic. . . ." and is inconsistent with just and equitable principles of trade); *Dep't of Enforcement v. Iavecchia*, No. 20070094253, 2009 FINRA Discip. LEXIS 44, at *18 (OHO Oct. 1, 2009) (holding that failure to disclose outside account "on the Firm's annual compliance forms violated Conduct Rule 2110").

B. Rojas Violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 by Failing to Provide an On-the-Record Interview

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.⁴² Further, a failure to cooperate in an investigation frustrates FINRA’s ability to detect misconduct and protect investors and markets.⁴³ It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.⁴⁴

In this case, pursuant to FINRA Rule 8210, FINRA staff issued two requests—dated July 9 and August 15, 2012—for Rojas to appear for an on-the-record interview. Because the August 15, 2012 request was sent to his CRD Address, the Hearing Officer concludes that Rojas is

⁴² See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, 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 Fed. App’x 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 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.”).

⁴³ *PAZ Sec., Inc.*, 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. May 29, 2009).

⁴⁴ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

deemed to have received that request pursuant to Rule 8210(d).⁴⁵ Rojas also had actual knowledge of the requests by at least August 29, 2012, the date on which Rojas's lawyer informed Enforcement that Rojas had indicated to him that he would not appear for testimony. Rojas never appeared for the on-the-record interview requested by the staff. Accordingly, by failing to appear for an on-the-record interview, Rojas violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

V. Sanctions

A. Rojas is Barred for Participating in the Impersonation of a Customer to Obtain Online Access to the Customer's Account and Making a False Statement to His Firm to Further the Impersonation Scheme in Violation of FINRA Rule 2010

There is no Sanction Guideline directly applicable to a Rule 2010 violation based on participating in a customer impersonation.⁴⁶ According to FINRA's National Adjudicatory Council ("NAC"), however, the Guidelines for forgery or falsification of records "offer appropriate guidance" and the Guidelines for misrepresentations or material omissions of fact "are also useful."⁴⁷

The Guidelines for forgery and/or falsification of records violations recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Guidelines recommend a bar.⁴⁸ In addition to the principal considerations applicable to all violations, the Guidelines for forgery and/or

⁴⁵ Rule 8210(d) currently provides, among other things, that a person shall be deemed to have received a Rule 8210 request if it is served upon counsel who is representing him in the investigation. This provision, however, did not become effective until February 25, 2013. See FINRA Regulatory Notice 13-06. Therefore, the Hearing Officer makes no finding as to whether Rojas is deemed to have received the July 9, 2012, request served only on his counsel.

⁴⁶ *Golonka*, 2013 FINRA Discip. LEXIS 5 at *27-28.

⁴⁷ *Id.* at *28.

⁴⁸ *FINRA Sanction Guidelines* 37 (2011), available at www.finra.org/sanctionguidelines [hereinafter *Guidelines*].

falsification state that an adjudicator should consider the nature of the document forged or falsified and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.⁴⁹

For intentional misrepresentations or material omissions of fact, the Guidelines recommend a fine between \$10,000 and \$100,000, a suspension with respect to any or all activities or functions from 10 business days to two years, and a bar in egregious cases.⁵⁰

Here, Rojas played an integral part in a customer impersonation scheme, fully aware of its purpose. To further the scheme, Rojas made misrepresentations to the Firm, both during the telephone call he placed to the call center and, after, in an e-mail to the call center employee. The conduct was intentional,⁵¹ designed to deceive the Firm, and circumvented the Firm's supervision of requests for online account access.

In seeking a bar, Enforcement argues that "impersonating a customer to prevent him from learning of account losses and sending a false email to firm compliance in furtherance of the impersonation scheme. . . is egregious." The Hearing Officer agrees. Additionally, no mitigation exists, on this record, sufficient to warrant Rojas remaining in the securities industry.⁵² Accordingly, Rojas will be barred for his conduct relating to the customer impersonation in violation of FINRA Rule 2010.

⁴⁹ *Id.*

⁵⁰ *Id.* at 88.

⁵¹ *Id.* at 7 (General Principles Applicable to All Sanction Determinations, No. 13).

⁵² In his e-mail to Merrill Lynch compliance, Rojas wrote that he was "extremely sorry" for not notifying the firm that "this suspicious activity was going on." He tried to mitigate his conduct by writing further that he "was in a very uncomfortable position being pressured by the FA." Nevertheless, he recognized that "looking in retrospective [sic], I should have known better and protect [sic] the integrity of the firm." These statements, without more, do not mitigate against the imposition of a bar, especially given that Rojas's admission of wrongdoing came after, not before, the wrongdoing was uncovered. *Cf. Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2).

B. Rojas is Barred for Failing to Provide an On-the-Record Interview in Violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010

The Sanction 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.⁵³ The Guidelines further provide that where mitigation exists, the adjudicator can consider a suspension of up to two years.⁵⁴ 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.⁵⁵

Applying the relevant considerations to this case, a bar is the appropriate sanction. Before it sent Rojas the two Rule 8210 requests at issue here, the staff sent Rojas a request for information. In July 2011, he responded to that request through counsel.⁵⁶ Therefore, the Hearing Officer concludes that the Sanction Guidelines governing partial but incomplete responses are applicable to Rojas’s Rule 8210 violations.⁵⁷ According to FINRA staff, the information sought

⁵³ *Guidelines*, at 33.

⁵⁴ *Id.*

⁵⁵ *Id.*

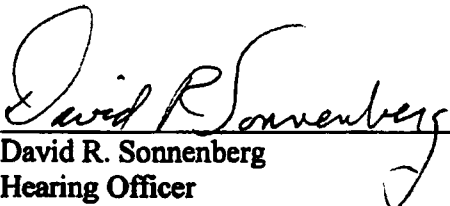
⁵⁶ The Complaint does not explicitly allege that this response was in connection with the same investigation that led to the instant disciplinary proceeding. *See* Compl. ¶ 13. And the evidence supporting the default motion is silent on this point. Nevertheless, it is apparent from Enforcement’s motion that the July 2011 response was in connection with the investigation that led to this proceeding. *See* Mot. 8–9.

⁵⁷ *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).

through an on-the-record interview “was important,” as “Enforcement was investigating allegations of customer impersonation and other improprieties with respect to customer accounts and Enforcement sought to question Rojas about the allegations.”⁵⁸ 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

Andres Rojas is barred from associating with any member firm in any capacity for (1) participating in the impersonation of a customer to obtain online access to the customer’s account and (2) making a false statement to his firm to further the impersonation scheme in violation of FINRA Conduct Rule 2010. Additionally, Rojas is barred for failing to provide testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. The bars shall become effective immediately if this Default Decision becomes FINRA’s final action in this disciplinary proceeding.


David R. Sonnenberg
Hearing Officer

Copies to:

Andres Rojas (via overnight courier and first-class mail)
Christopher Perrin, Esq. (via electronic mail and first-class mail)
Michael J. Rogal, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

⁵⁸ Mot. 9. The record is silent as to whether the information provided in July 2011 was “relevant and responsive to the request.”

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

**DEPARTMENT OF ENFORCEMENT,
COMPLAINANT,**

v.

**ANDRES ROJAS
(CRD No. 4799671),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2011027886901**

HEARING OFFICER—_____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In July 2010, while he was registered with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch" or "firm"), Respondent Andres Rojas participated in the impersonation of a customer and made false statements to the firm in an email in connection with the impersonation. In July and August 2012, Rojas also refused to appear for an on-the-record interview requested pursuant to FINRA Rule 8210.

2. By participating in the impersonation of a firm customer, and by sending the false email to the firm, Rojas committed separate violations of FINRA Rule 2010. By failing to appear for an on-the-record interview requested pursuant to FINRA Rule 8210, Rojas violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Andres Rojas (CRD # 4799671) was registered as a General Securities Representative with Merrill Lynch from September 2006 to April 2011, when he was terminated. Until October 2010, Rojas was a registered Client Associate assigned to

assist senior broker GC at the firm's International Office located in Miami, Florida.

Rojas is not currently associated with a FINRA member.

4. Although Rojas 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) this Complaint was filed within two years after the effective date of termination of Respondent Rojas' registration with Merrill Lynch, namely May 24, 2011; and (2) this Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests 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.

STATEMENT OF FACTS

5. At Merrill Lynch, Rojas worked as a sales associate to senior broker GC servicing client accounts primarily focused on high net worth clients living in Latin America. Rojas worked primarily to support the senior broker GC until October 2010, when he transferred to a different department.

6. Customer GL, a citizen of Guatemala, opened an account at the firm in February 2010 for a personal holding company, BDM. The value of the holdings in the BDM Merrill Lynch account was approximately \$3 million in June 2010. By April 2011, the value of the account's holdings had fallen to approximately \$629,000.

Rojas Participates in the Impersonation of a Customer

7. On July 8, 2010, the senior broker GC and Rojas contacted the firm's call center.

8. During the call, after identifying himself as an employee of the Merrill Lynch Miami office, Rojas told the call center employee that he wanted to help a customer enroll in online access and that the customer, GL, was on hold on another phone line. However, the senior broker GC, not GL, was the person on hold. When the call center employee asked to speak with the customer, Rojas introduced the senior broker GC as the customer GL, and the senior broker then told the operator that he was the customer GL.

9. Rojas remained on the phone while the call center employee asked the senior broker GC security questions about GL's place of birth and email address. The senior broker GC answered all the securities questions correctly since he had access to that information as the broker for GL's BDM account.

10. During the call, the Merrill Lynch call center employee provided the senior broker GC and Rojas with an account login and temporary password for GL's account. The senior broker GC then used that login and password (i) to change the account preferences so that Merrill Lynch would no longer send hard-copy statements to the customer and (ii) to change the email address associated with the account to one controlled by the senior broker so that he, not the customer, would receive electronic communications from the firm relating to the account.

11. The impersonation of customer GL during the call was designed to prevent the customer from detecting substantial losses in the BDM account caused by trading done by senior broker GC. The customer did not authorize the senior broker GC or Rojas to impersonate him or to obtain online access to his accounts.

Rojas' False Statement in Connection with the Impersonation

12. Rojas submitted a false request to the firm in connection with the customer impersonation. During the call when senior broker GC was impersonating customer GL, the Merrill Lynch call center employee asked Rojas to submit a request in writing, via email, confirming that the request for online access was being made by the customer. Rojas emailed the call center employee stating that "the client requesting is [customer GL-BDM]." This statement was false because the customer GL did not make the request.

Rojas' Failure to Cooperate

13. In July 2011, Rojas' counsel submitted a letter on behalf of Rojas in response to a FINRA request for information. On July 9, 2012, because Rojas' counsel had made an appearance on behalf of Rojas in FINRA's investigation, Enforcement staff sent Rojas' counsel a request for Rojas' on-the-record interview pursuant to FINRA Rule 8210. On August 15, 2012, Enforcement staff sent to Rojas at his address listed in CRD and through counsel another request for an on-the-record interview pursuant to FINRA Rule 8210. On August 29, 2012, counsel for Rojas informed Enforcement staff that Rojas had indicated to him that he would not be appearing for the on-the-record interview as requested or at any other time. Enforcement staff had previously informed Rojas' counsel and Rojas that a failure to appear would violate FINRA Rule 8210. Rojas never appeared for the on-the-record interview requested by Enforcement staff.

**FIRST CAUSE OF ACTION
PARTICIPATION IN IMPERSONATION OF A CUSTOMER TO OBTAIN
IMPROPER ONLINE ACCESS TO THE CUSTOMER'S ACCOUNT
(FINRA RULE 2010)**

14. The Department reallages and incorporates by reference paragraphs 1 through 13 above.

15. As described above, in July 2010, Rojas participated in a call to a Merrill Lynch call center in which senior broker GC impersonated a customer, GL. By participating in this scheme to impersonate a customer, which he knew was designed to allow GC to obtain unauthorized online access to the customer's account and which resulted in the improper account preference changes and suppression of account statements that reflected trading losses, Rojas acted inconsistent with high standards of commercial honor and just and equitable principles of trade.

16. As a result of the foregoing conduct, Rojas violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
FALSIFICATION
(FINRA RULE 2010)**

17. The Department reallages and incorporates by reference paragraphs 1 through 16 above.

18. As described above, Rojas sent an email to Merrill Lynch personnel falsely representing that a request for online account access was being made by customer GL when, in fact, he knew that this representation was false and that GL had not made such a request.

19. Rojas' false statement was inconsistent with high standards of commercial honor and just and equitable principles of trade.

20. As a result of the foregoing conduct, Rojas violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION
FAILURE TO APPEAR FOR AN ON-THE-RECORD INTERVIEW
(FINRA RULES 8210 AND 2010)**

21. The Department reallages and incorporates by reference paragraphs 1 through 20 above.

22. By letters dated July 9 and August 15, 2012, Enforcement requested that Rojas appear for an on-the-record interview pursuant to FINRA Rule 8210. The August 15, 2012 letter was sent to the Rojas' CRD address and was also sent to Rojas' counsel. By email dated August 29, 2012, counsel for Rojas confirmed that Rojas had indicated to him that he would not appear as requested or at any other time. Rojas never appeared as requested by Enforcement staff.

23. As a result of the foregoing conduct, Rojas violated FINRA Rule 8210. As a result of the violation of FINRA Rule 8210, Rojas also violated FINRA Rule 2010.

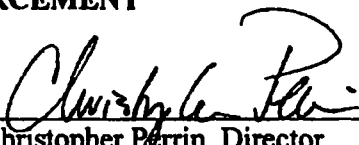
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that the Respondent 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 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: May 20, 2013



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